

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH AT NEW DELHI  
ORIGINAL APPLICATION NO. 110 (Thc) OF 2012**

**IN THE MATTER OF:**

Threat to life arising out of Coal Mining  
in South Garo Hills District

...Applicant

VERSUS

State of Meghalaya &amp; Ors.

... Respondents

**AND IN THE MATTER OF:-**

Dalmia Cement (Bharat) Ltd.

...Proposed Respondent/Impleader

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FILED BY

  
 MAHESH AGARWAL  
 ADVOCATE FOR THE PROPOSED RESPONDENT  
 AGARWAL LAW ASSOCIATES  
 19, BABAR ROAD, BENGALI MARKET,  
 NEW DELHI – 110001  
 PH: 011 – 42200000  
 EMAIL – mail@aglaw.in

PLACE; NEW DELHI  
 DATED:30.05.2023

9910483627

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**Reply on Behalf of Dalmia (Cement) Bharat Ltd. To The 5th  
Interim Report of The Committee Appointed by this Hon'ble  
Tribunal**

**MOST RESPECTFULLY SHOWETH:-**

1. The present Affidavit-in-Reply Affidavit is being filed by M/s Dalmia Cement (Bharat) Ltd (“DCBL”) to the 5<sup>th</sup> Interim Report of the Committee appointed by this Hon’ble Tribunal in the captioned Original Application. The contents of the 5<sup>th</sup> Interim Report are denied *in toto* and nothing stated therein may be deemed to be admitted for want of a specific traverse.
2. The present Affidavit-in-Reply is being filed pursuant to the directions of the Hon’ble Supreme Court in the Judgment dated 02.05.2023 passed in “*Star Cement v. State of Meghalaya & Ors.*” (Civil Appeal No. 3820 of 2020), along with a connected matter titled “*Dalmia Cement (Bharat) Limited v. State of Meghalaya & Others*” (Civil Appeal No. 4991-4992 of

2021), wherein the Hon'ble Supreme Court has directed as follows,

*"[...]we would have to restore the proceedings in relation to the appellants back to the file of the NGT, at the stage, at which they stood prior to the passing of the impugned judgment dated 17 January 2020. Consequently, and to facilitate the above exercise, we set aside the impugned judgment dated 17 January 2020 in relation to its applicability to the Appellants before this Court and direct that:*

- (i) **The Appellants shall submit their responses to the interim reports of the Committee appointed by NGT within a period of four weeks;***
- (ii) NGT shall furnish to the Appellants an opportunity of being heard, after which it shall proceed to pass orders after dealing with the suggestions and objections of the Appellants in accordance with law;*
- (iii) NGT shall take a final decision in three months; and*
- (iv) The Appellants would be at liberty to apply to the NGT for inspection of records, including the underlying documents which were submitted by the Committee."*

A copy of the Judgment passed by the Hon'ble Supreme Court in *Star Cement v. State of Meghalaya & Others*, Civil Appeal No. 3820 of 2020 along with Civil Appeal No. 4991-4992 of

2021 titled *Dalmia Cement (Bharat) Limited v. State of Meghalaya & Others* and other connected matters is annexed herewith and marked hereto as ANNEXURE R-1.

3. The captioned matter, in respect of which the above-stated Judgment was passed, pertains to the prohibition of, and remedial action towards, rat hole mining of coal. This Ld. Tribunal, in the course of these proceedings, passed an Order dated 31.08.2018 continuing the prohibition on rat hole mining and constituting a Committee headed by Hon'ble (Retd.) Justice B. P. Katakey, for the restoration of environment and rehabilitation of victims ("**Committee**"). The Committee submitted several interim reports before this Ld. Tribunal including the presently disputed 5<sup>th</sup> Interim Report dated 02.09.2019. The recommendations made by the Committee in the 5<sup>th</sup> Interim Report were accepted by this Hon'ble Tribunal *vide* Order dated 17.01.2020.
4. The above Civil Appeal(s) before the Hon'ble Supreme Court were filed by DCBL, along with other power/cement producers operating in the State of Meghalaya. In Civil Appeal No.4991-4992/2020, DCBL challenged the Order(s) passed by this Hon'ble Tribunal dated 17.01.2020 and 15.03.2021 in the present proceedings. By way of the Order dated 17.01.2020, this Hon'ble Tribunal, (i) accepted all recommendations made

by the Committee in its 5th Interim Report dated 02.12.2019 and (ii) consequently directed proceedings to be initiated against the cement and power plants, including DCBL, under the Mines & Minerals (Regulation and Development) Act, 1957 and other Environmental laws.

5. By way of the 5th Interim Report, the Committee, in respect of DCBL, recorded that there is a gap in the quantity of coal necessary to produce the required quantity of clinker and power by DCBL, as against the quantity of coal actually procured. The said gap of coal was ascertained by the Committee to the tune of 7,41,092 MT. As far as DCBL is concerned, the Committee has assumed and recorded that the coal requirement was met through illegally mined local coal. In doing so, the Committee outrightly rejected the claim of DCBL that the coal requirement was met by slate, an alternate fuel, on the ground that the same was not technically feasible or legally permissible. In view of the above, the Committee recommended to that this Hon'ble Tribunal to realize royalty, GST/VAT and contribution to MEPRF from DCBL amounting to:

Royalty	Rs. 50.024 crores
MEPRF	Rs. 35.943 crores
GST/VAT	Rs. 29.644 crores
	<b>Rs. 115.61 crores</b>

In addition, the Committee also recommended that an amount of Rs.400/MT of coal to be utilized by DCBL herein (and other plants) on or after the date of the order shall be directed to be deposited in the MEPRF.

Accordingly, the Director of Mineral Resources, Meghalaya, Shillong issued a demand notice to DCBL on 16.07.2020 (refereeing to an earlier notice of 19.02.2020), directing it to make the payment of the aforesaid amounts as per the 5th Interim Report within 1 month. This demand notice was followed up by subsequent demand notices issued by various statutory authorities.

6. In light of the direction of the Hon'ble Supreme Court in its Order dated 02.05.2023, the present Reply is being filed to the 5th Interim Report of the Committee. DCBL humbly craves this Hon'ble Tribunal's leave to file a further detailed Reply and/or additional documents, after inspecting the underlying documents in the present Application, including the other Reports of the Committee, as permitted by the Hon'ble Supreme Court in direction (iv) in the Order dated 02.05.2023.

#### **PRELIMINARY SUBMISSIONS**

7. Adhunik Cement Limited (predecessor in interest of DCBL) commissioned its fully integrated clinker cement manufacturing plant in the State of Meghalaya with a capacity

of 1.5 million tons per annum of cement and 1.30 million tons per annum of clinker alongwith a 25MW Captive Power Plant (CPP). Pursuant to the approval of Scheme of Arrangement vide Order dated 10.01.2018 passed by the National Company Law Tribunal, Chennai Bench, Adhunik Cement Limited stood merged with DCBL.

8. The present Counter Affidavit is filed in response to the erroneous findings of the 5th Interim Report. In the Report, the following findings were rendered *qua* DCBL,

***“2.4 Dalmia Cement (Bharat) Limited and its Captive Thermal Power Plant***

[...]

***2.4.5. The Committee, based on a detailed analysis (given in para 2.2.26 to 2.2.52) of a similar claim of the Star Cement Limited on use of alternate fuel in lieu of coal is of the view that it is neither technically feasible nor legally permissible for the Dalmia Cement (Bharat) Limited to replace more than two-third of their coal requirement, as is being claimed by them, by any alternate fuel.***

***2.4.6[...]*** *The Dalmia Cement (Bharat) Limited also informed the Committee that average estimated quantity of coal and/or any other alternate fuel(s) required to produce one tone of clinker and one unit (kwh) of power will primarily depend on the calorific value of coal/any other alternate fuel. They further informed that there is very*

*high variation in various kinds of fuel used and therefore there is no standard per ton usage which can be estimated as it varies from year to year.*

**2.4.7 [...]The Committee therefore is of the view that specific fuel requirements of the Cement Manufacturing Plant and Captive Thermal Power Plant of the Dalmia Cement (Bharat] Limited are same as the specific fuel requirements of the similar plants the Star Cement Limited (viz. 15 % of the clinker produced and 0.850 kg/kwh of the power produced)”**

9. The impugned report is factually as well as legally untenable for following reasons:
  - I. **The Committee outrightly rejected the utilization of 8,21,115 MT (3,88,913 MT in Kiln and 4,32,202 MT in CPP) of alternate fuel by DCBL in a wholly unreasoned manner**
    - a) DCBL had clearly informed the Committee about the use of alternate fuel in their plants. This has been recorded in paragraph 2.4.3 of the 5th Report. However, while assessing the requirement of coal, the Committee completely ignored the use of any alternate fuel by DCBL. This was done on the sole and erroneous premise that the claim for use of alternate fuel by a separate Plant, i.e. Star Cement Ltd. was rejected by the Committee. It is an admitted fact that the Committee did not undertake any independent inspection of DCBL's

CPP or cement plant. The approach adopted by the Committee also overlooks the peculiar features in the plant design and machinery of each plant. Thus, merely by relying on the findings *qua* an unrelated and different plant, the Committee outrightly rejected the fact that DCBL utilized alternate fuel.

- b) It is relevant to note that the quantity of coal procured by DCBL, as on record, along with other alternate fuel was sufficient for running of its plants to produce the reported quantity of clinker and power during the resource audit period from FY 2014-15 to 2018-19. However, by ignoring the use of alternate fuel, the Committee has presumptuously arrived at an incorrect conclusion, that DCBL has purchased/used illegally mined coal.
- c) The assumption of the Committee, that use of slate by DCBL as alternate fuel, to meet two-thirds of the coal requirement, is technically not feasible without change or modification in plant design, is completely misconceived and incorrect. The design of the DCBL's plants is such so as to support use of other alternate fuels including slate, which is clear from the following expert Reports,

- i. Report dated February, 2022 titled “*Study of Existing System Compatibility & Optimizing Use of Alternative Fuel & Fuel Mix*” by HOLTEC Consulting Private Limited, which is an ISO-certified advisory, primarily positioned to service the entire gamut of multi-functional, consulting needs of the global cement industry (**Annexure 16 to the present Reply**). Upon an inspection of the cement plant, it was found that,

*“Introduction of Slate as alternative fuel has generated the additional volume handling requirement, due to reduced calorific value and high Ash content.*

*It is observed that DCBL has adequate facilities for handling, storage and processing of Slate and other alternative fuels (RDF, Plastic Waste, Saw Dust and Bamboo sticks ) at their cement manufacturing plant.*

*[...]*

*The assessment concludes that, using Slate as Alternative fuel in a state of the art coal based clinkerisation facility does not demand any major changes in plant process and modification/ addition of new equipment, if adequate design margins are available in the fuel unloading, storage, grinding, dozing and firing systems.*

*Cement manufacturing facilities at DCBL are suitably equipped to operate with up to 50%, Slate as Alternative fuel in their fuel mix, with suitable*

*change in raw mix design, within the existing system, without any need of alteration/ addition of their existing equipment & facilities”*

- ii. Service Visit Report of ISGEC Heavy Engineering Ltd. (ISO Certified) dated 19.03.2014 wherein, upon a detailed inspection of the plant machinery at the Cement Plant (boilers provided by ISGEC) **(Annexure 2 to the present Reply)**, it was found,

*“Considering the existing available bed size and maximum allowable fluidization velocity in the bed, it is feasible to fire maximum of 80% MCR washery Rejects as stand alone fuel in the existing boiler. ”*

Pertinently, MCR washery rejects have an even lower gross calorific value than Slate/Mu-Slate, however, it was found that 80% MCR washery rejects can be used as stand-alone fuel.

- iii. Meghalaya State Pollution Control Board (MSPCB) *vide* its letter dated 13.09.2019 had informed the Committee that:

*“... prima facie the use of alternate fuel by cement and power plants is technically feasible and is in fact encouraged by Pollution Control Board” [Para 2.2.17 of the 5th Report].*

Thus, there was no occasion for the Committee to discard the use of alternate fuel by DCBL, despite the same also being found to be technically feasible and being, in fact, used by DCBL even

prior to the ban on rat-hole coal mining imposed by this Hon'ble Tribunal in 2014.

- iv. The feasibility of usage of alternate fuel by DCBL, without making any alteration in the plant can also be clearly inferred from the comments of the North Eastern Regional Directorate of CPCB as extracted in para 2.2.18 of the 5th Report which are being reproduced herein below for ready reference:

*“(ii) if the industries use Pet Coke or slate as alternate fuel resource (ARF) it is not required to modify or attach a new fuel/material feeding system. AFR are generally used together with coal. **As the physical characteristics of pet coke and slate are similar to coal as these alternate fuel can be used in the existing coal mills for pulverization before feeding into the kiln or boilers after blending with coal.** The CPCB has been working on use of AFR, Hazardous Waste (HW) and Refused Derived Fuel (RDF) in the cement mills, power plants and also in the blast furnaces so as to use the resources inherited in the wastes generated by various industries or municipalities[...].*

*(iii) The CPCB has published guidelines for use of AFR/HW/ RDF in these industries. The CPCB has been conducting workshops, seminars etc., amongst the stakeholders to*

*promote the use of these AFR/HW/RDF in cement kiln or boilers.*

- (iv) *Besides the encouragement by CPCB, MoEF & CC, of late has been stipulating specific conditions to a few cement mills in Meghalaya to use HD/RDF/AFR in kilns. Even the EC granted to various cement industries in the region stipulates such conditions.*

*[...]*

- (vii) ***Cement Industries and power plants in Meghalaya, the industries are using slate as AFR in the cement kilns and the power plants.*** *It is understood that slates are also mined together with coal in the coalfields of Meghalaya. Slates are differentiated from coal from their appearance and structure. It is learnt that slates commonly occur as overburdens together with the coal deposits. Slates are having less calorific value than the coal and therefore have less market values. Though data is not available regarding calorific value of slate in the State of Meghalaya, during field visit to the industries, use of slate/ Muslate by the industries were observed. [...]*

- (viii) ***From the sample documents supplied by the industries, it is observed that the industries are paying royalty on the slate being produced. The CPCB in general***

*does not go into details of the royalty payment by the industries.*

***(ix) The CPCB agrees to the point that the Cement Industries/ Power Plants are not involved in illegal mining of coal or slate. Documentary evidences have been submitted by the industries that the fuel/AFR are procured after payment of royalty.”***

v. It is pertinent to mention here that even the Commissioner and Secretary to the Government of Meghalaya, Mining and Geology Department had stated before the Committee that “*Local suppliers have supplied muslate or slate sourced **from overburden of coal mining** carried out prior to the ban imposed by the Hon’ble NGT to the cement plant. The Cement plants have paid royalty on slate or muslate used”*. [Refer to para 2.2.25 of the 5th Report]. Thus, having already paid royalty on the slate used as alternate fuel, which is acknowledged by the State as well, the Committee’s assessment of gap in coal consumption of DCBL, ignoring the use of slate as alternate fuel is completely unjustified, illegitimate and untenable and amounts to double enrichment of the state.

vi. In the 17th meeting of the Committee held on 14-08-2019, coal required by DCBL to produce the reported quantity of clinker and power was assumed to be 14.66% for clinker and 0.72 kg of

coal per KW of power. This was further arbitrarily enhanced to 15% and 0.850 kg/kwh respectively in the 5th Interim Report. However, no basis whatsoever was disclosed for the above assumptions.

- d) DCBL, *vide* communication dated 14.09.2019, clearly stated to the Committee that DCBL had utilized alternate fuel. DCBL is also furnishing the complete data including the following, a) Clinker production, b) Power Production, c) procurement of coal/alternate fuel and consumption efficiency. ***(A Complete Statement of the aforesaid data has been marked as ANNEXURE R-11 to the present Reply)***. A summary of the same is reproduced hereunder,

Coal procured from 2014-15 to 2018-19 (including opening stock)	<b>3,64,793 MT</b>
Alternate fuel procured from 2014-15 to 2018-19 (including opening stock)	<b>8,88,951 MT</b>
Clinker Produced from 2014-15 to 2018-19	<b>41,78,584 MT</b>
Power produced from 2014-15 to 2018-19	<b>5,26,837 MWHr/MU</b>

<b>CONSUMPTION OF FUEL</b>					
	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>
Production of Clinker <i>(figures in MTs)</i>	6,68,239	7,32,700	7,92,075	9,00,686	10,84,883
Coal, Slate and Saw Dust	1,22,037	1,24,961	1,08,286	1,41,707	1,57,972

consumption for <b>Kiln</b> (figures in MTs)					
% of usage	18%	17%	14%	16%	15%
	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>
Power Generation (figures in million units)	1,17,403	1,08,108	88,733	1,02,485	1,10,108
Coal, Slate and Saw Dust consumption for <b>CPP</b> (figures in MTs)	1,17,212	1,04,269	68,849	93,291	1,03,283
	1.00	0.96	0.78	0.91	0.94

The abovementioned details *qua* quantity of fuel stand certified *vide* the Auditor's certificate dated 27.05.2023, a copy of which is annexed herewith as **ANNEXURE R-17**.

Therefore, there is almost no gap either in the manufacture of cement/clinker or in the production of Power in DCBL's Plant.

- II.** The Committee also failed to take into consideration the opening stock of coal of 30,710 MT in the year 2014, which was available with DCBL, as can be seen from the books and data submitted before the Committee. This is an apparent factual error in the assessment of the Committee, which has crept in while making the calculations.
- III.** The gap in coal requirement was calculated on the basis of figures specific to Star Cements Limited. This has led to the exaggeration of the gap in coal requirement. The

Committee failed to consider the technical factors involved in relation to a plant, while making its assessment against DCBL. Hence, the methodology of calculation adopted by the Committee is inherently wrong, being based upon mere assumptions and surmises, instead of actual data pertaining to the plants. The quantity of coal required for production of clinker/power is dependent upon various factors such as plant design, plant load factor, operational efficiency, coal quality (i.e. calorific value, moisture etc. depending upon Indian / imported coal), alternate fuel, fuel mix etc. There cannot be any assumed formula with respect to coal/any other alternate fuel or raw material consumption in manufacture of clinker and power generation in CPP within the State of Meghalaya as each plant may have a different requirement based on the design of the respective plants, variable calorific values of coal / fuel and other technical factors as stated above. It is further submitted that the quantum of fuel even for the same plant varies from time to time depending on various factors as stated above. Thus, the reliance by the Committee basis assumed quantity of coal instead of the actual consumption of various fuel mix is flawed and has led to incorrect conclusions.

- IV.** The Committee presumed, without any rational basis or fact-finding inquiry, that the gap in coal requirement was met by illegally mined coal.

- V. DCBL has made payments made through banking channels/ bank transfers towards the alternate fuel, which is reflected in the books of account of DCBL (*details of alternate fuel procured stand certified the Auditors certificate annexed at Annexure R-17 to the present Reply*). Further, the Alternate Fuel was purchased on payment of applicable royalty and taxes. Thus, having accepted the statutory levies, it is not permissible to label the fuel as illegally procured.
- VI. The said Report seeks to recommend the imposition of levies in spite of the fact that such levies cannot be imposed on the “user” of such a mineral, under the provisions of the Mines and Minerals, Development and Regulation Act, 1957. Any levy/ penalty is only imposable *qua* the miner. Therefore, there is a complete lack of jurisdiction insofar as these levies are concerned.
10. The conclusions of the 5th Interim Report are based on an incomplete appreciation of facts. The factors leading up to the said Report are stated as under:

**FACTUAL BACKGROUND:**

11. Adhunik Cement Ltd. commissioned a fully integrated clinker-cum-cement manufacturing plant in Meghalaya with a capacity of 1.5 million tons per annum of cement and 1.30 million tons

per annum of clinker. This unit also integrates a 25 MW captive power plant.

The National Company Law Tribunal, Chennai Bench, by way of Order dated 10.01.2018, granted approval to a 'Scheme of Arrangement' whereby, Adhunik Cement Ltd. stood merged with Dalmia Cement (Bharat) Limited ("DCBL"). DCBL is now one of India's pioneering cement manufacturing companies, with its headquarters situated in New Delhi.

12. In 2012, a news article reported that thirty coal labourers got trapped in a Coal Mine resulting in the death of fifteen of them. In response, the Hon'ble Gauhati High Court, on 06.07.2012, took cognisance of the matter by registering PIL *Suo-Moto* No. (SH) 3/2012. Thereafter, the Hon'ble High Court, vide order dated 10.12.2012, directed the PIL to be transferred to this Hon'ble Tribunal.
13. On 19.03.2014, IGSEC Heavy Engineering Limited (ISO Certified) issued a Service Visit Report after a detailed inspection of the plant machinery at the cement plant of DCBL including of the boilers provided by IGSEC.

A copy of the Service Visit Report of IGSEC Heavy Engineering Limited is annexed herewith and marked as **ANNEXURE R-2**.

14. In the meantime, on 17.04.2014, this Hon'ble Tribunal passed an Order in O.A. No.73/2014 titled ***All Dimasa Students Union Dima Hasao District Committee v. State of Meghalaya and Others***, directing the State of Meghalaya to ensure that rat hole mining is stopped forthwith throughout the State, including transportation of illegally mined coal. This matter was later tagged with the captioned matter i.e. O.A. No.110 (Thc)/2012.

A copy of the Order dated 17.04.2014 passed by this Hon'ble Tribunal in O.A. No. 73/ 2014 is annexed herewith and marked as **ANNEXURE R-3**.

15. By Order-dated 09.06.2014, this Hon'ble Tribunal permitted transportation of the already extracted material lying, in open, near the sites, subject to the supervision and directions of a committee comprising of the Director of Mines, Meghalaya and such other officers as prescribed. The committee was required to quantify the extracted coal and its location and also to assess its value. It was to prescribe the mode of transportation and fix two checkpoints en-route transportation of the extracted coal from the point of loading to the point of destination.

A copy of Order dated 09.06.2014 passed by this Hon'ble Tribunal is annexed herewith and marked as ANNEXURE R-4

16. On 25.03.2015, this Hon'ble Tribunal directed that the State Government shall in addition to the royalty payable to it, also collect 10% of the market value of the coal per metric tonne from each person. The amount so collected was to be deposited in the account to be titled as 'Meghalaya Environment Protection and Restoration Fund' (**MEPR Fund**). The MEPR Fund was to be maintained by the State under the direct control of the Chief Secretary of the State of Meghalaya. The market value of coal was taken as Rs.4850/- per MT based on the report of Comptroller and Auditor General of India for the period ending 31st March, 2013 wherein under 7.5.18 of Chapter 7 invoice value of coal has been taken as Rs.4850/- per MT. This Hon'ble Tribunal further clarified that this 10% of the additional amount shall be payable by all persons who had transported the coal in the past or would transport in future, without exception.

A copy of Order dated 25.03.2015 passed by this Hon'ble Tribunal is annexed herewith and marked as ANNEXURE R-5

17. Thereafter, on 31.08.2018, after reviewing the earlier proceedings, this Hon'ble Tribunal directed that rat hole mining shall remain prohibited as also the transportation of the illegally sourced/mined material. This Hon'ble Tribunal directed the constitution of a Committee to be headed by Hon'ble Justice B. P. Katakey, a retired former High Court Judge of the Hon'ble Gauhati High Court, for the restoration of environment and rehabilitation of the victims ("**Committee**"). The Committee was granted the liberty to take up incidental issues and was to supervise issues arising out of receivership/custodianship of the already extracted coal, including environmental issues arising out of storage.

A copy of the Order dated 31.08.2018 passed by this Hon'ble Tribunal, in O.A. No.110 (Thc)/2012 is annexed herewith and marked as **ANNEXURE R-6**.

18. Meanwhile, six Civil Appeals were filed before the Hon'ble Supreme Court by different parties against various Orders of this Hon'ble Tribunal. These were disposed of vide a common Judgment dated 03.07.2019 in the case of ***State of Meghalaya and Others v. All Dimasa Students Union, Dima-Hasao District Committee and Others*** reported at (2019) 8 SCC 177 and an Order was passed in the following terms:

**“Conclusions: -**

195. From the foregoing discussions we arrived at following conclusions:-

195.1 The application O.A.No.73 of 2014 has clearly made out allegations which were sufficient for the Tribunal to exercise its jurisdiction as conferred by Section 14 of the National Green Tribunal Act, 2010. Both the component as appearing in sub-section 1 of Section 14 that is (i) substantial question relating to environment and (ii) such question arises out of the implementation of the enactments specified in Schedule I, were present.

195.2 The allegations of the applicant of O.A.No.73of 2014 of environmental degradation by illegal and unregulated coal mining were fully proved from materials on the record including the report of the experts, report of the Meghalaya State Pollution Control Board, the report of Katakey committee, which all proved environmental degradation of water, air and surface.

195.3 The stand taken on behalf of the State of Meghalaya before this Court that the Tribunal has no jurisdiction cannot be approved. The State Government is under constitutional obligation to ensure clean environment to all its citizens. In cases pertaining to environmental matter, the State has to act as facilitator and not as obstructionist.

195.4 According to the land tenure system as applicable in the Hills Districts of State of Meghalaya, the most of the lands are either privately or community owned in which State does not claim any right. The private owners of the

*land as well as community owners have both the surface right as well as sub-soil rights.*

*195.5 Para 12A sub-clause (b) of Sixth Schedule of the Constitution empowers that the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification. No notification has been issued by the President under Section 12A(b). There is nothing in Sixth Schedule of the Constitution which may indicate about the inapplicability of Act, 1957 with regard to the Hills Districts of State of Meghalaya.*

*195.6 There is nothing in Section 4(1) of 1957 Act to indicate that restriction contained in Section 4(1) does not apply with regard to privately owned/community owned land in Hills Districts of Meghalaya. Further, word 'any area' under Section 4(1) also has significance which does not have any exception. Further phrase "except under and in accordance with terms and condition with a mining lease granted under the Act" are also significant which make the intent and purpose of prohibition clear and loud.*

*195.7 The statutory scheme delineated by Section 13(2)(f) and the Minerals (Concession) Rules, 1960 clearly contemplate grant of mining lease, with regard to both the categories of land, i.e., land in which minerals vest in the Government, and the land in which minerals vest in a person other than the Government.*

- 195.8 *The Mines Act, 1952 contains various provisions regarding inspection of mining operation and management of mines. The provisions of The Mines Act, 1952 are mandatory to be followed before working a mine. The regulations namely Coal Mines Regulations, 2017 also contains several regulatory provisions which need to be followed while working a mine by a mining lease holder. The enforcement of Mines Act, 1952 and the Regulations, 2017 have to be ensured by the State in the public interest.*
- 195.9 *As per statutory regime brought in force by notification dated 15.01.2016 issued under Environment (Protection) Act, 1986, environmental clearance is required for a project of coal for mining of any extent of area. While implementing statutory regime for carrying mining operations in the Hills Districts of the State of Meghalaya, the State of Meghalaya has to ensure compliance of not only MMDR Act, 1957 but Mines Act, 1952 as well as Environment (Protection) Act, 1986.*
- 195.10 *In Hill District of State of Meghalaya for carrying coal mining operations in privately owned/community owned land it is not the State Government which shall grant the mining lease under Chapter V of Rules, 1960, but it is the private owner/community owner of the land, who is also the owner of the mineral, who shall grant lease for mining of coal as per provisions of Chapter V of Rules, 1960 after obtaining previous approval of the Central Government through the State Government.*
- 195.11 *The State of Meghalaya has ample power and jurisdiction under the Act, 1957 and Rules, 1960 to*

*check, control and prohibit coal mining operations in Hill Districts of State of Meghalaya.*

*195.12 The Union having made declaration by Section 2 of 1957 Act taking under its control regulation and development of mineral, the power of Autonomous District Council to legislate on the subject shall also be denuded as that of the State Legislature.*

*195.13 In event the mining is carried out by a mining lease holder as per the provisions of Act, 1957 and Rules, 1960 with an approved mining plan there can be no objections in carrying of such mining operations under the regulation and control of the State of Meghalaya. We clarify that in event mining operations are undertaken in privately owned/community owned land in Hills Districts of Meghalaya in accordance with mining lease with approved mining plan as per Act, 1957 and Mineral Concessions Rule, 1960, the ban order dated 17.04.2014 of the tribunal of the NGT shall not come in way of carrying mining operations.*

*195.14 Under Order 26 Rule 10A of the Civil Procedure Code, a Court can appoint commission for scientific investigation. The power which can be exercised by a Court under Order 26 Rule 10A of CPC can very well be exercised by the NGT also. The NGT while asking expert to give a report is not confined to the four corners of Rule 10A and its jurisdiction is not shackled by strict terms of Order 21 Rule 10A by virtue of 19(1) of the NGT Act.*

*195.15 Rule 24 of National Green Tribunal (Practice and Procedure) Rules, 2011 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the*

*ends of justice. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. There is no lack of jurisdiction in NGT in directing for appointment of a committee and to obtain a report from a Committee.*

*195.16 The direction to constitute a fund namely "Meghalaya Environment Protection and Restoration Fund", is also saved under the above power.*

*195.17 NGT by directing for constitution of committee has not delegated essential judicial functions. The Tribunal had kept complete control on all steps which were required to be taken by the committees and has issued directions from time to time. The State is always at liberty to obtain appropriate directions if aggrieved by any act of the committee. The matter being pending before the Tribunal all acts of the committee are under direct control of the Tribunal and if the committee oversteps in any direction the same can very well be corrected by the Tribunal on the matter being brought before it.*

*195.18 NGT by issuing direction to constitute the committee for transportation of the extracting mineral, for preparing time bound action plan to deal with the restoration of environment and to ensure its implementation does not in any manner interfere with the powers of the District or Regional Councils. The District and Regional Councils are free to exercise all their powers and committee constituted by the Tribunal is only concerned with the Environmental degradation and illegal coal mining. The committees report or direction of the Tribunal in no manner encroaches upon the administration of Tribal areas by the District and Regional Councils.*

- 195.19 *The amount which has been directed by NGT to be deposited by State of Meghalaya is neither a penalty nor a fine imposed on the State of Meghalaya. We accept the submissions of the learned counsel for GCL that State of Meghalaya has very limited source of finances and putting an extra burden on the State of Meghalaya to make payment of Rs. 100 Crores from its own financial resources may cause great hardship to the State of Meghalaya. Ends of justice be served in modifying the direction of NGT dated 04.01.2019 to the extent that State is permitted to transfer an amount of Rs. 100 Crores from the amount lying in the MEPRF to the Central Pollution Control Board. The Central Pollution Control Board as directed by the Tribunal shall utilize the aforesaid amount of Rs.100 Crores only for restoration of the environment in the State of Meghalaya.*
- 195.20 *The coal extracted and lying in open after 15.05.2016 does not automatically vest in the State of Meghalaya and the owner of the coal or the person who has mined the coal shall have the proprietary right in the mineral which shall not be lost.*
- 195.21 *The suggestion of learned Amicus Curiae that entire extracted coal lying at various places in hills districts of Meghalaya be directed to be taken over by Coal India Ltd. is accepted. The Coal India Ltd. may dispose of the same as per its normal method of disposal and proceeds be dealt with as per directions issued.*
- 195.22 *The State having carried out the assessment of the coal lying in the aforesaid four districts including the details of the quantities and the details of owners being available with it, it may ensure that entire coal is handed*

*over to the Coal India Ltd., as per the mode and manner to be formulated by Katakey Committee in consultation with officers of the Coal India Ltd. and the State of Meghalaya.*

*195.23 It is for Coal India Ltd. to decide as to venue, where they shall receive the coal, i.e., either at any of its depot or any other place in the State of Meghalaya and it is for the Coal India Ltd. to finalise the process of disposal and auction of the coal. It shall be the duty of the State of Meghalaya and its officers especially Deputy Commissioner of the area concerned to enter details of quantity of the coal, name of the owner and place from where it is collected. All concerned shall take steps to ensure weighing of the coal when it is received by Coal India Ltd.*

*195.24 The expenses of transportation shall be borne by the State of Meghalaya, Coal India Ltd. Or by both, which expenses shall be deductible from the price received of the coal. The State of Meghalaya shall be entitled to royalty and payment towards MERP Fund as well as taxes out of the price of the coal. After deducting its expenses for transportation with 10% of price of the coal, the Coal India Ltd. shall remit the balance amount to the State and it is for the State after deducting the royalty and payment to the MERP Fund and taxes to pay back balance the amount to the owner.*

*195.25 The coal which has been seized by the State in illegal transportation and illegal mining for which different cases have been registered by the State, is not to be dealt with as directed above. The seized coal shall be dealt by the State in accordance with Section 21 of the*

*Act, 1957 and on being satisfied, the State can take a decision to recover the entire quantity of coal so illegally raised without lawful authority.*

196. *In view of the foregoing discussions and conclusions, all these appeals are decided in the following manner: -*

196.1 *Civil Appeal No. 10720 of 2018, Civil Appeal No. 10611 of 2018, Civil Appeal No. 10907 of 2018 and Civil Appeal No.....of 2019 (arising out of Civil Appeal Diary No. 3067 of 2018) are dismissed subject to declaration and clarification of law as made above.*

196.2 *Civil Appeal No. 5272 of 2016 is allowed setting aside the order of NGT dated 31.03.2016 to the extent it declared that all extracted coal after 15.05.2016 shall vest in the State of Meghalaya.*

196.3 *Civil Appeal No. 2968 of 2019 is partly allowed permitting the State of Meghalaya to transfer the amount of Rs. 100 Crores to Central Pollution Control Board from the Meghalaya Environment Protection and Restoration Fund which amount shall be used by Central Pollution Control Board only for restoration of Environment.*

196.4 *All I.As seeking direction for transportation of coal are disposed of directing:*

- i) *All extracted coal as assessed by State of Meghalaya lying in different districts of State of Meghalaya which as per order of NGT is in custody of State of Meghalaya shall be handed over to Coal India Ltd. for proper disposal.*
- ii) *The Katakey Committee after discussion with Coal India Ltd. and State of Meghalaya shall formulate*

*a mechanism for transport, weighment of all assessed coal.*

*iii) The Coal India Ltd. 'shall auction the coal so received by it as per its best judgment and remit the proceed to State to the extent as directed above.*

*iv) All coal seized by the State for which cases have already been registered shall be dealt by the State in accordance with Section 21 of 1957 Act."*

A copy of the final Judgment dated 03.07.2019 titled *State of Meghalaya and Others versus All Dimasa Students Union, Dima-hasao District Committee and Others*, reported at (2019) 8 SCC 177 is annexed herewith and marked as **ANNEXURE R-7.**

19. That to carry out the resource (coal) audit for the power generating and cement manufacturing plants of the State of Meghalaya, the Committee *vide* letter dated 28.08.2019 and a subsequent letter dated 05.09.2019, sought information from DCBL on the quantity of clinker/ power produced and the quantity of coal consumed for production of clinker/power.

A copy of the Letter dated 05.09.2019 issued by the Committee to DCBL is annexed herewith marked as **ANNEXURE R-8.**

20. DCBL, on 14.09.2019, submitted the (i) year-wise details of clinker and/or power produced since 2014; (ii) year-wise details of coal or other alternate fuel used since 2014; and also the, (iii) year-wise details of quantity of clinker/cement on which transport subsidy has been obtained, if any since 2014.

A copy of the Letter dated 14.09.2019 issued by DCBL to the Committee is annexed herewith and marked as **ANNEXURE R-9.**

21. Pursuant to its enquiries, the Committee submitted its 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Interim Reports before this Hon'ble Tribunal intimating the Hon'ble Tribunal of the status of various issues dealt with by the Committee. The Reports contained recommendations for the consideration of this Hon'ble Tribunal.
22. On 02.12.2019, the 5th Interim Report of the Committee was published. The issues concerning DCBL were dealt with at paragraph 2.4 under the heading "Dalmia Cement (Bharat) Ltd. and its Captive Thermal Power Plant".
23. Based on the information provided by DCBL and relying on the analysis of the data of another cement plant namely, Star Cements Limited ("SCL"), the Committee in its 5th Interim Report arbitrarily concluded that there was a gap in DCBL's coal requirement and the same was met from illegally mined

local coal. It was recorded that during the FYs 2014-15 to 2018-19, DCBL procured coal to the extent of 3,33,507 MT as against the presumed coal requirement of 10,74,599 MT. Therefore, based on this conjecture, the Committee concluded that there was a gap of 7,41,092 MT between the coal required and the coal procured. It was further assumed that this gap of 7,41,092 MT was met by DCBL from illegally sourced coal.

The aforesaid figure was arrived by the Committee on the basis of an erroneous and arbitrary assumption that the coal requirement of DCBL is 15% per MT of clinker produced and 0.85 kg/KWH of power generated. The Committee, while relying on the analysis of the plant of Star Cements Limited, disregarded the technical capacities and efficiency of DCBL's plant itself and the fuel mix used by DCBL in its plant in the State of Meghalaya.

It is crucial to note that the Committee, in arriving at the aforesaid conclusion, out rightly disregarded the Alternate Fuel utilized by DCBL, basis factors or considerations peculiar to the plant of another company i.e. Star Cements Limited. The Committee noted that the SCL's Cement Plant was designed to only use coal as a fuel. The same reasoning has been imputed on to the plant of DCBL. Therefore, the Committee,

solely on the basis of analysis done for SCL, concluded that it is not feasible for DCBL to replace a substantial part of its coal requirement with Alternate Fuel.

In light of the above, the Committee concluded that DCBL was utilizing illegally mined coal. The Committee recommended that this Hon'ble Tribunal realize Royalty, GST/ VAT and contribution to MEPRF from DCBL amounting to **Rs.115.61** Crore:

Royalty	Rs.50.024 Crore
MEPRF	Rs.35.943 Crore
GST/VAT	Rs.29.644 Crore
<b><u>TOTAL:</u></b>	<b>Rs.115.61 Crore</b>

In addition, the Committee also recommended that an amount of Rs.400/MT of coal to be utilized by DCBL herein (and other plants) on or after the date of the order shall be directed to be deposited in the MEPR Fund.

24. The findings and recommendations of the Committee are stated here-in-below:

*“CHAPTER 3: FINDINGS AND RECOMMENDATIONS*

*3.1 FINDINGS*

*3.1.1 Except for the clinker manufacturing plant of the Mawmluh Cherra Cement Limited (A State PSU) and Captive Power Plants of the Maithan Alloy Limited and the CMJ Breweries Private Limited, **there is a huge gap***

*in quantity of coal required to produce reported quantity of clinker and/or power and the coal reported to be purchased from legal sources during the Audit Period by all other Cement Manufacturing Plants and Thermal Power plants in the State of Meghalaya for which resource (coal) audit could be completed by the Committee. ”*

With respect to Royalty and taxes on the allegedly illegally mined coal, the Committee found that,

***“3.1.4 No royalty, taxes and any other statutory levies has been paid to the State of Meghalaya on the illegally mined coal utilized by these Cement Manufacturing Plants and Thermal Power Plants during the Audit Period resulting in a huge loss to the State exchequer”***

The Committee further noted that some cement manufacturing and TPPs have stated that they have used non-fuel minerals like slate as a substitute to their coal requirement and observed that,

***“3.1.6 Claim of these Cement Manufacturing Plants and Thermal Power Plants that about two-third of their coal requirement have been met by a non-fuel mineral (i.e. slate) without making any change in the design of these plants is not tenable. [...]***

***3.1. 7 These Plants have purchased illegally mined local coal in the name of slate to circumvent the ban imposed by the Hon’ble NGT on illegal rat-hole coal mining in the State of Meghalaya and also to evade payment of royalty, GST/VAT and other statutory levies***

*and contribution to MEPR Fund on the coal utilized by them. ”*

In light of the above, it was recommended that,

**3.2.1 (2). *The State of Meghalaya, the Ministry of Environment, Forest and Climate Change, Government of India and the Meghalaya State Pollution Control Board shall initiate proceedings in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957; the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 the Environment (Protection) Act, 1986 and the rules, regulations & guidelines framed thereunder against each of the Cement Manufacturing Plants and the Thermal Power Plants who has used illegally mined local coal after a ban on the rat-hole coal mining in the State of Meghalaya was imposed by this Tribunal in the month of April, 2014.***

**3.2.1(3). *The State of Meghalaya shall realize royalty, GST/VAT, contribution to the MEPR Fund and any other statutory tax and levy payable on the illegally mined coal utilized by these Cement Manufacturing Plants and the Thermal Power Plants in the State of Meghalaya after the ban on illegal rat-hole mining in the State of Meghalaya was imposed by this Tribunal in April 2014.***

**3.2.1.(4). *To restore the damage caused to the flora, fauna, rivers, streams, water bodies and the environment in general by illegal rat-hole mining of coal and also to mitigate the suffering caused to the local tribal residents***

*by the illegal rat hole coal mining, the State of Meghalaya shall realize from each of the aforementioned Cement Manufacturing Plants and Thermal Power Plants who have used illegally mined local coal after a ban on illegal rat-hole coal mining was imposed by this Tribunal in the month of April 2014, an additional amount of Rs. 400 per tonne of coal to be utilized by each such plants on or after the date of this order and deposit the same in the MEPR Fund.”*

A copy of 5<sup>th</sup> Interim Report dated 02.12.2019 is annexed herewith and marked as **ANNEXURE R-10**.

25. The 5th Interim Report does not consider the use of alternate fuel by DCBL in reaching the aforesaid conclusion. The gap in coal requirement is also inflated on account of arbitrary figures assumed by the Committee. DCBL is furnishing complete data with respect to a) Clinker Production b) Power Production c) procurement of coal/ alternate fuel and also the consumption efficiency.

A Complete Statement of production and procurement data with respect to DCBL's Plant is annexed herewith and marked as **ANNEXURE R-11**.

26. After about a month, on 17.01.2020, this Hon'ble Tribunal passed an Order, accepting in *toto* the recommendations of

the 4th, 5th, and 6th Interim Reports. Neither any Notice was issued to DCBL nor was it asked to provide a response to the findings of the Committee. Hence, the principles of natural justice were not followed. Resultantly, DCBL could not assist this Hon'ble Tribunal in putting forth a response to the said Reports, particularly the 5th Interim Report. It could not point out the glaring legal and factual inaccuracies in the Interim Report of the Committee.

27. On 19.02.2020, pursuant to the abovementioned Order dated 17.01.2020 of this Hon'ble Tribunal, the Directorate of Mineral Resources, Shillong issued a Notice to DCBL asking it to make the necessary payments in accordance with the 5th Interim Report.

A copy of the Notice dated 19.02.2020 issued by the Directorate of Mineral Resources, Shillong is annexed herewith and marked as **ANNEXURE R-12**.

28. On 12.06.2020, the Superintendent (A/E), Office of the Commissioner of Central Goods & Services Tax, Shillong issued a Summons against DCBL under Section 70 of Central Goods & Services Tax Act, 2017.

A copy of the Summons dated 12.06.2020 issued by the Superintendent (A/E), Office of the Commissioner of Central

Goods and Service Tax, Shillong bearing No. (16)04/AE/CGST/SH/2020 is annexed herewith and marked as **ANNEXURE R-13.**

29. Thereafter, on 16.07.2020, the Director of Mineral Resources, Meghalaya, Shillong issued a Notice to DCBL, in continuation of the earlier Notice dated 19.02.2020, directing DCBL to make the necessary payment towards Royalty and MEPR Fund on the illegally mined coal within a month from the issuance of this letter.

A copy of Notice dated 16.07.2020 (DMR/MM/768/2018/Pt-II/Vol-IV/265) issued by Director of Mineral Resources, Meghalaya, Shillong to DCBL is annexed herewith and marked as **ANNEXURE R-14.**

30. This Hon'ble Tribunal passed its final Judgment dated 15.03.2021 in O.A. No.110 (Thc)/ 2012 reiterating the contents of the Order dated 17.01.2020 and accepting the 4th, 5th, and 6th Interim Reports of the Committee in entirety. Resultantly, several authorities continued to raise illegal and unlawful demand notices against DCBL by wholly relying on the erroneous findings of the 5th Interim Report.
31. On 23-07-2021, DCBL, aggrieved by the Order dated 17.01.2020 and the Order dated 15.03.2021 of this Hon'ble

Tribunal, filed Civil Appeal No. 4991-92 of 2021 titled ***Dalmia Cements (Bharat) Limited v. State of Meghalaya & Others*** before the Hon'ble Apex Court, assailing the above-stated Orders. On 23.08.2021, the Hon'ble Supreme Court issued notice in the Appeal and tagged it with the main matter namely, ***Star Cement (Supra)*** i.e. Civil Appeal No. 3820 of 2020.

A copy of the Order dated 23.08.2021 passed by the Hon'ble Supreme Court in Civil Appeal No. 4991-92/2021 titled "*Dalmia Cements (Bharat) Limited v. State of Meghalaya & Others*" is annexed hereto and marked as **ANNEXURE R-15**.

32. The Hon'ble Supreme Court disposed of the abovementioned Appeals filed by DCBL and similarly placed Power/ Cement Plants in Meghalaya, *vide* its Judgment dated 02.05.2023, in the following terms:

*"[...]we would have to restore the proceedings in relation to the appellants back to the file of the NGT, at the stage, at which they stood prior to the passing of the impugned judgment dated 17 January 2020. Consequently, and to facilitate the above exercise, we set aside the impugned judgment dated 17 January 2020 in relation to its applicability to the appellants before this Court and direct that:*

- (i) ***The appellants shall submit their responses to the interim reports of the Committee appointed by NGT within a period of four weeks;***

- (ii) *NGT shall furnish to the appellants an opportunity of being heard, after which it shall proceed to pass orders after dealing with the suggestions and objections of the appellants in accordance with law;*
- (iii) *NGT shall take a final decision in three months; and*
- (iv) *The appellants would be at liberty to apply to the NGT for inspection of records, including the underlying documents which were submitted by the Committee.”*

33. Pursuant to the directions of the Hon'ble Supreme Court, DCBL humbly submits before this Hon'ble Tribunal that the findings and recommendations of the 5th Interim Report are based on conjecture, presumptions, and are factually incorrect.

34. In the meantime, in February 2022, HOLTEC Consulting Private Limited, which is an ISO-certified advisory, primarily positioned to service the entire gamut of multi-functional, consulting needs of the global cement industry issued a Report titled '*Study of Existing System Compatibility & Optimizing Use of Alternative Fuel & Fuel Mix*'.

A copy of the Report titled '*Study of Existing System Compatibility & Optimizing Use of Alternative Fuel & Fuel Mix*' issued by HOLTEC Consulting Private Ltd is annexed herewith and marked at **ANNEXURE-R-16**.

35. Thereafter, on 27.05.2023, an Auditor's certificate was issued by Reeta Bhansali & Co., Chartered Accountants, certifying the year-wise detail of coal and alternate fuel procured for DCBL's Plant.

A copy of the Auditor's Certificate dated 27.05.2023 is annexed herewith and marked as **ANNEXURE R-17**.

**SUBMISSIONS:**

- A. **The alleged gap in the coal requirement was met by the use of Alternate Fuel:**

36. The 5th Interim Report recorded that the gap between quantity of coal necessary to produce the required quantity of clinker (@15%) and power (@0.850 kg/kwh) as against the quantity of coal actually procured, is 7,41,092 MT. The Committee has concluded that the gap in coal requirement has been entirely met by DCBL from illegally mined local coal. However, this finding overlooks the use of alternate fuel in the form of slate/Mu-slate and is thus, factually incorrect and erroneous.
37. Slate/Mu-Slate are mined together with coal in the coalfields of Meghalaya. They commonly occur as an overburden together with the coal deposits. It must be noted that prior to the ban of rat hole mining, mine owners used various small crushers in the coal depots, to crush or pulverize Slate into powder. This was then mixed with coal procured by DCBL.

However, slate/ mu-slate has a low gross calorific value. Thus, most of it lay unused. However, after the ban on rat hole mining, the locals approached cement companies including DCBL, for procurement of slate/ mu-slate, which is an overburden material.

38. DCBL has utilized 8,88,951 MT of alternative fuel during FYs 2014-2015 to 2018-2019.
39. The Committee outrightly rejected the use of alternate fuel by DCBL solely for the reason that in the case of another company, i.e. Star Cement Ltd., it was found that the use of Alternate Fuel is not technically feasible. Hence, it is an admitted fact that there was no independent assessment by the Committee on use of alternate fuel *qua* DCBL's Power Plant or Cement Plant.
40. Insofar as the technical feasibility and usability of alternate fuel is concerned, HOLTEC Consulting Private Ltd, an ISO-certified advisory, which is primarily positioned to service the entire gamut of multi-functional, consulting needs of the global cement industry issued a Report dated February, 2022 titled "*Study of Existing System Compatibility & Optimizing Use of Alternative Fuel & Fuel Mix*". HOLTEC, upon an inspection of the Cement Plant, found that,

*“Introduction of Slate as alternative fuel has generated the additional volume handling requirement, due to reduced calorific value and high Ash content.*

*It is observed that DCBL has adequate facilities for handling, storage and processing of Slate and other alternative fuels (RDF, Plastic Waste, Saw Dust and Bamboo sticks ) at their cement manufacturing plant.*

*[...]*

*The assessment concludes that, using Slate as Alternative fuel in a state of the art coal based clinkerisation facility does not demand any major changes in plant process and modification/ addition of new equipment, if adequate design margins are available in the fuel unloading, storage, grinding, dozing and firing systems.*

*Cement manufacturing facilities at DCBL are suitably equipped to operate with up to 50%, Slate as Alternative fuel in their fuel mix, with suitable change in raw mix design, within the existing system, without any need of alteration/ addition of their existing equipment & facilities”*

41. This also stands corroborated by an Expert Report issued in 2014, before the rat-hole mining (coal) ban. At that point of time, there was no incentive for DCBL to wrongly portray its technical feasibility. The Service Visit Report of ISGEC Heavy Engineering Ltd. (ISO Certified) dated 19.03.2014 states that,

*“Considering the existing available bed size and maximum allowable fluidization velocity in the bed, it is*

*feasible to fire maximum of 80% MCR washery Rejects as stand alone fuel in the existing boiler. ”*

Pertinently, MCR washery rejects have an even lower gross calorific value than Slate/Mu-Slate. However, it was found that 80% MCR washery rejects can be used as stand-alone fuel.

42. In light of the above, it can be seen that if the Committee had inspected the Plant of DCBL, it would've found that the use of alternate fuel is technically sound and feasible.
43. It is also pertinent to note that DCBL had submitted certain information, as sought for by the Committee, on 14.09.2019. It was also submitted by DCBL that DPR of Adhunik Cement Limited, which now stands merged with the DCBL, was not available with them at the said time and thus a request was made to the Committee to permit submission of the same, as and when the same becomes available [para 2.4.6 of the 5<sup>th</sup> Interim Report]. The Committee however neither gave DCBL an opportunity to submit the above documents, nor did it ask for any clarification with respect to the already submitted documents.
44. The use of alternate fuel by DCBL in its Cement Plant and Thermal Power Plant to meet the gap in coal requirement is further reaffirmed *vide* communications issued by several statutory authorities. Following are some instances of the same:

- a) The feasibility of usage of alternate fuel by DCBL, without making any alteration in the plant can also be clearly inferred from the comments of the North Eastern Regional Directorate of CPCB as extracted in para 2.2.18 of the 5th Report which are being reproduced herein below for ready reference:

*“(ii) if the industries use Pet Coke or slate as alternate fuel resource (ARF) it is not required to modify or attach a new fuel/material feeding system. AFR are generally used together with coal. As the physical characteristics of pet coke and slate are similar to coal and these alternate fuel can be used in the existing coal mills for pulverization before feeding into the kiln or boilers after blending with coal. The CPCB has been working on use of AFR, Hazardous Waste (HW) and Refused Derived Fuel (RDF) in the cement mills, power plants and also in the blast furnaces so as to use the resources inherited in the wastes generated by various industries or municipalities. It is already established that disposal of wastes in the cement kilns, power plants, blast furnaces, etc. could be best possible method to dispose of the wastes in an environmentally sound manner in one hand and also to recover the resources inherited in the wastes by these industries so that use of conventional fuel is reduced significantly.*

*(iii) The CPCB has published guidelines for use of AFR/HW/ RDF in these industries. The CPCB has*

*been conducting workshops, seminars etc., amongst the stakeholders to promote the use of these AFR/HW/RDF in cement kiln or boilers.*

- (iv) Besides the encouragement by CPCB, MoEF & CC, of late has been stipulating specific conditions to a few cement mills in Meghalaya to use HD/RDF/AFR in kilns. Even the EC granted to various cement industries in the region stipulates such conditions.*
- (v) To use AFR/RDF/HW in the kilns, amendment in the EC by the concerned project is not required as per the provisions of the EC Notification, 2006. Amendment of EC is required for expansion, modification of projects and also changing in product mix. Using of AFR is only a change in fuel mix but not a change in product mix. Using of AFR/HW/RDF in a kiln/boiler/furnace, use of conventional fuel like coal is reduced. The arrangement helps in reducing the consumption of conventional fuel like coal and this brings in reduction in greenhouse gas emission. Thus, the use of AFR/HW/RDF in cement kilns/power plants/blast furnace, etc. have significant environmental benefits and therefore such industries are encouraged to use AFR/HW/RDF. Moreover, as the country is facing lot of problems in managing the solid wastes, use of these wastes in kilns shall also minimize the waste disposal problems in the country.*
- (vii) Cement Industries and power plants in Meghalaya, the industries are using slate as AFR in the cement*

*kilns and the power plants. It is understood that slates are also mined together with coal in the coalfields of Meghalaya. Slates are differentiated from coal from their appearance and structure. It is learnt that slates commonly occur as overburdens together with the coal deposits. Slates are having less calorific value than the coal and therefore have less market values. Though data is not available regarding calorific value of slate in the State of Meghalaya, during field visit to the industries, use of slate/ Muslate by the industries were observed. When coal mining was in operation before the mining ban, various small crushers were observed in the coal depots. These crushers used to crush/pulverize the slate into power the slate into power form and used to mix with the coal.*

*(viii) From the sample documents supplied by the industries, it is observed that the industries are paying royalty on the slate being produced. The CPCB in general does not go into details of the royalty payment by the industries.*

*(ix) The CPCB agrees to the point that the Cement Industries/ Power Plants are not involved in illegal mining of coal or slate. Documentary evidences have been submitted by the industries that the fuel/AFR are procured after payment of royalty."*

b) It is pertinent to mention here that even the Commissioner and Secretary to the Government of Meghalaya, Mining and Geology Department had stated

before the Committee that “Local suppliers have supplied muslate or slate sourced from overburden of coal mining carried out prior to the ban imposed by the Hon’ble NGT to the cement plant. The Cement plants have paid royalty on slate or muslate used”.

[Refer to para 2.2.25 of the Fifth Interim Report]. Thus, having already paid royalty on the slate used as alternate fuel, which is acknowledged by the State as well, the Committee’s assessment of gap in coal consumption of DCBL, ignoring the use of slate as alternate fuel is completely unjustified, illegitimate and untenable and amounts to double enrichment of the State.

- c) The Meghalaya State Pollution Control Board's (“MSPCB”) issued a letter-dated 13.09.2019 clarifying that *“revised consent to operate under the Air / Water Act was not required for use of alternate fuel”*. MSPCB further stated that *“prime facie the use of alternate fuel by the cement and power plant is technically feasible and is in fact encouraged by the Pollution Control Board.”* This has been referred to in the 5th Interim Report at paragraph 2.2.17.

45. The Committee concluded that DCBL purchased illegally mined coal basis assumptions and presumptions. The

conclusion of the Committee is entirely based on conjecture and assumptions. Therefore, the findings of the Committee must be disregarded.

**B. The Committee did not consider the actual coal requirement figures:**

46. The Committee in the 5th Interim Report observed that:

***“2.4.7 [...]The Committee therefore is of the view that specific fuel requirements of the Cement Manufacturing Plant and Captive Thermal Power Plant of the Dalmia Cement (Bharat] Limited are same as the specific fuel requirements of the similar plants the Star Cement Limited (viz. 15 % of the clinker produced and 0.850 kg/kwh of the power produced)***

47. The specific coal requirement of DCBL's Power Plant, during the period 2014-15 to 2018-19, was not considered. However, the Committee erroneously and arbitrarily assumed the coal consumption to be 0.85 kg/kwh during the said period. Further, insofar as the Clinker Plant is concerned, the figure of 15% of the clinker produced was adopted based on the parameters of Star Cement Ltd. The Committee further relied on a statement by the Unit Head of Calcom Cement India Ltd. (CCIL), a subsidiary of Dalmia Cement (Bharat) Limited, located at Umrangsoo, Assam, who had stated that the coal requirement for clinker production stands at about 15% of total clinker

production in general. However, this was a general statement, and was not specific to the Plant in question. Further, this was an oral and un-official statement, which was given out of context as a matter of experience. That even if this statement is taken at face value, it only pertained to “coal” and not alternate fuel, which may not have the same calorific value as coal. As a result, quantity of fuel will vary depending upon the usage of alternate fuel(s) like slate/mu-slate. Further, requirement of fuel also varies from plant to plant.

48. Based on this erroneous method, the Committee has presumed that DCBL has utilized illegally procured coal to meet the gap in coal requirement. This is in complete disregard of the facts on record, as submitted by DCBL and also by the CPCB and MSPSB.

C. **There is no proof of any illegal coal being purchased or used by DCBL**

49. DCBL has made each and every payment for purchase of coal and alternate fuel by cheque/bank transfer and the details of the procurement by DCBL stand certified by the Auditors Certificate dated 27.05.2023 annexed as **Annexure R-17** to the present Reply.

50. DCBL had been regularly filing reports on coal consumption quantity for generation of power every year to Inspectorate of

Electricity, Shillong, Meghalaya, without any objections being raised by the concerned authorities with respect to quantum of coal used.

**D. Without prejudice to the above, DCBL is not liable to pay Royalty/ GST/ VAT/ Dues on the illegally mined coal:**

51. DCBL having not mined/purchased any illegal coal, question of payment of royalty, taxes and other statutory levies on the same does not arise. . Even for a moment assuming but not admitting that the illegally sourced coal is used/ transported/ stored, the liability to pay royalty for such illegally sourced mineral cannot be imposed on the 'user' of mineral as per the scheme of the MMDR Act.
  
52. A plain reading of the Sections 4(1) and 4(1A) of the MMDR Act clearly shows that the same are applicable to the person mining under the MMDR Act, which is not being carried out by DCBL. The show-cause notices dated 3.11.2020, 8.2.2021 and 30.04.2021 and the notices dated 19.2.2020 and 16.7.2020 issued by the DMR to DCBL do not make any allegation regarding mining operations having been conducted by DCBL. Furthermore, they do not make any allegation against DCBL, that it has transported, stored or caused to be transported or stored coal except in accordance with the provisions of the MMDR Act. In the absence of any such

averments in the notice, the proceedings being sought to be conducted against DCBL are without any authority in law, and thus deserve to be set aside.

53. That no evidence was led before the Committee to show that illegally sourced coal was either transported, stored or used by DCBL and no evidence was led before the Committee to show that DCBL was ever involved in illegal mining of coal. Hence, such a liability cannot be fastened on DCBL on the basis of mere assumptions, apprehensions and surmises.
54. DCBL further submits that the State having accepted royalty on slate which is an overburden of coal, cannot belatedly term it as illegal. It is worth mentioning that the Government of Meghalaya has only recently issued Office memorandum dated 06.04.2020 laying down the procedure for obtaining Prospecting License or Mining Lease for coal mining under the provisions of Chapter V of the Mineral Concession Rules, 1960. Prior to that there was no mechanism for issuance of Prospecting License or Mining Lease for coal mining in the State of Meghalaya. The Committee in its 1st Report had itself mentioned that *“though the coal mines all over the country were nationalised by an Act passed by the Parliament, that is, Coal Mines Nationalization Act, 1973, and subsequently brought under the Coal India Limited in November, 1975, the*

*coal mines in Meghalaya remained outside the purview of the said Act due to Sixth Schedule of the Constitution of India. Hence, the land owners are also the owners of the minerals below their land.” Thus, purchase of coal and alternate fuel for which all statutory taxes and royalty have been paid by the DCBL cannot be terms as illegally sourced.*

55. It is further submitted that the Committee could not have levied a payment of Rs.400/MT without there being any statutory provision for the same.
56. Lastly, it is submitted that without there being any determination of liability on account of royalty, taxes etc. and the assessment thereof being completed by competent authority, the question of demand and recovery of the same based on assumption does not arise.
57. The question of payment of royalty or GST on purchase of illegally sourced coal only arises once such purchase is established. It is pertinent to note that royalty attracts payment of GST under a reverse charge mechanism. It is absolutely illegal to seek payment of GST on royalty when the principal liability, i.e. royalty on coal itself is under dispute. Therefore, it is highly premature for the authorities to seek such payment while the factual question of utilizing the coal is disputed.

58. The four components of taxes and other statutory dues are charge, levy, assessment and recovery. The levy of taxes and recovery thereof under different statutes are hedged by various limitations and subject to fulfillment of various pre-conditions. Without there being any determination of liability on account of Royalty, taxes etc. and the assessment thereof being completed by competent authority the question of demand and recovery of the same does not arise. The demand and recovery of dues by the recommendations of the Committee is absolutely without jurisdiction as it amounts to entrenchment of power specifically reserved for some of the State authorities under different statutes.
59. The Committee does not have the Jurisdiction to levy royalty/GST/Vat without there being any determination of liability and the assessment thereof being completed by competent authority. Therefore, the question of demand and recovery of the same does not arise. It is respectfully submitted that neither the Committee nor the Hon'ble Tribunal have the power and/ or jurisdiction in so far as imposition and recovery of taxes, royalty and various other statutory dues, if any, payable to the State.
60. It is further submitted that, in the matter of *Dilip Kumar Sharma v. State of Madhya Pradesh [AIR 1976 SC 133]* it

held that, if two constructions are possible upon the language of the statute, the Court must choose the one which is consistent with good sense and fairness, and eschew the other which makes its operation unduly oppressive, unjust or unreasonable, or which would lead to strange, inconsistent results or otherwise introduce an element of bewildering uncertainty and practical inconvenience in the working of the statute. In the present case, imposing a levy and penalty on DCBL basis assumptions and presumptions is wholly unwarranted and cannot be sustained in law. The levy / penalty, if any, for illegal mining of coal should be on the person who has done illegal mining.

61. In light of the above, the findings and recommendations of the Committee in its 5th Interim Report, with respect to DCBL, should not be accepted and relied upon, even for the purposes of imposing a levy/ penalty for the alleged usage of illegally mined coal.

FILED BY

MAHESH AGARWAL  
ADVOCATE FOR THE PROPOSED RESPONDENT  
AGARWAL LAW ASOCIATES  
19, BABAR ROAD, BENGALI MARKET,  
NEW DELHI – 110001  
PH: 011 – 42200000  
EMAIL – mail@aglaw.in

PLACE; NEW DELHI  
DATED:30.05.2023



BEFORE THE NATIONAL GREEN TRIBUNAL

(PRINCIPAL BENCH), NEW DELHI

ORIGINAL APPLICATION NO. 110 (THC)/ 2012

IN THE MATTER OF:

Threat to life arising out of coal mining in South ...Applicant  
Garo Hills District

*versus*

State of Meghalaya & Others ...Respondents

AND

IN THE MATTER OF:

Dalmia Cement (Bharat) Limited ...Proposed

Respondent

AFFIDAVIT

I, Padmanav Chakravarty, son of Late Nikhil Chandra Chakravarty, aged about 54 years, Authorized Signatory of the proposed Respondent namely, Dalmia Cement (Bharat) Limited having office at 3rd-4th Floor, ABC-II, ABC, GS Road, Guwahati-781005, Assam, do hereby solemnly affirm and declare as under:

1. That I am the Authorized Signatory of the proposed Respondent herein. I am fully conversant with the facts and circumstances of the matter and am competent to swear this affidavit.
2. The contents of the accompanying affidavit in reply are true and correct to the best of my knowledge and have been drafted by the counsel on my instructions and nothing

*Handwritten Signature*  
NABASISH CHAKRABARTY  
NOTARY Govt. of Assam  
Regd. No. KAM - 06  
Panbazer, Guwahati - 781001

30 MAY 2023

material has been concealed therefrom.

DALMIA CEMENT (BHARAT) LTD

AUTHORISED SIGNATORY

DEPONENT

VERIFICATION:

I, the above named deponent do hereby verify that the facts stated herein above are true to my knowledge and belief and no part of it is false and no material fact has been concealed therefrom.

Verified on this 30<sup>th</sup> day of May, 2023 at Guwahati.

DALMIA CEMENT (BHARAT) LTD

AUTHORISED SIGNATORY

DEPONENT

IDENTIFIED BY

*C. Sarmah*  
ADVOCATE

SOLEMNLY AFFIRMED and  
declared before me by the  
Deponent on being identified  
by learned Advocate



*Nabasish*  
NABASISH CHAKRABARTY  
NOTARY Govt. of Assam  
Regd. No. KAM - 06  
Panbazar, Guwahati - 781001

30 MAY 2023

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No 3280 of 2020**

**Star Cement Limited & Ors**

**.... Appellant(s)**

**Versus**

**State of Meghalaya & Ors**

**....Respondent(s)**

**WITH**

**Civil Appeal No 4144 of 2020**

**Civil Appeal No 2302 of 2021**

**Civil Appeal No 2355 of 2021**

**Civil Appeal Nos 2726-2727 of 2021**

**Civil Appeal Nos 4991-4992 of 2021**

**Civil Appeal No 781 of 2022**

**Civil Appeal No 3528 of 2022**

**Civil Appeal No 4962 of 2022**

**ORDER**

- 1 This batch of appeals arises from a judgment of the National Green Tribunal<sup>1</sup> dated 17 January 2020.
- 2 In 2012, the Gauhati High Court registered a public interest litigation *suo motu* on the basis of a news item in the month of July, stating that several labourers were trapped inside a coal mine resulting in large scale deaths. The proceedings before the Gauhati High Court were transferred to the NGT and were numbered as Original Application No 110 (THC)/2012.
- 3 In the meantime, in 2014, All Dimasa Students Union Dima Hasao District Committee instituted Original Application No 73 of 2014 before the Principal Bench of the NGT making serious allegations against 'rat-hole' mining operations which were being carried out in Jaintia Hills of the State of Meghalaya without regulation under the law.
- 4 The NGT issued an order on 17 April 2014 directing the State of Meghalaya to ensure the cessation of rat-hole mining forthwith and of the illegal transportation of coal.
- 5 During the pendency of the proceedings, a Committee was constituted on 9 June 2014 to quantify the coal that had already been extracted before the ban and to assess its location and value. The Committee was also to prescribe the mode of transportation. This was followed by subsequent orders of the NGT. On 31 August 2018, the NGT constituted a Committee chaired by a former Judge of the  
1 "NGT"

Gauhati High Court to look into the restoration of the environment and rehabilitation of the victims. The Committee was also to supervise issues pertaining to receivership / custodianship of the already extracted coal, including environmental issues arising out of storage and remedial steps. The Committee furnished a report on 2 January 2019, which was considered by the NGT in an order dated 4 January 2019.

- 6 The order also took note of another tragic incident which had taken place on 13 December 2018, despite the earlier ban by the NGT.
- 7 From the impugned order of the NGT, it emerges that the Committee had submitted three reports on 2 January 2019, 31 March 2019 and 2 August 2019, which were dealt with by the NGT in its orders dated 4 January 2019, 11 April 2019 and 22 August 2019. The Committee thereafter submitted reports dated 31 August 2019, 2 December 2019 and 3 December 2019. The gist of these reports was set out by the NGT. The Committee, in the course of its fifth interim report dated 2 December 2019, arrived at the conclusion that there was a huge gap in the quantity of coal required to produce the reported quantity of clinker and/or power and the coal reported to have been purchased from legal sources by the cement manufacturing plants and thermal power plants in the State of Meghalaya for which an audit was completed by the Committee. The Committee estimated the year-wise quantity of the coal required to produce the reported quantities of clinker and/or power, the coal actually purchased from legal sources and the gap between them for 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19. Having carried out this exercise, the Committee estimated in the case of nine industrial units:

- (i) The quantity of illegal coal used in metric tonnes;
- (ii) The royalty payable;
- (iii) The contribution required to be made to the Environmental Protection and Restoration Fund; and
- (iv) GST/VAT payable.

The Committee submitted its sixth interim report dated 3 December 2019 to deal with the objections raised by the State of Meghalaya.

- 8 From the impugned order of the NGT, it emerges that the proceedings before the NGT came up for hearing on 9 January 2020 and the impugned order was uploaded on the website on 17 January 2020. After setting out the gist of the reports, the NGT dealt with the objections which were filed by the State of Meghalaya to the reports submitted by the Committee on 31 August 2019 and 3 December 2019. After rejecting the objections of the State of Meghalaya, the NGT proceeded to issue its directions, accepting all the recommendations of the Committee in the fourth interim report dated 31 August 2019, fifth interim report dated 2 December 2019 and sixth interim report dated 3 December 2019. The directions which have been issued by the NGT are summarized thereafter in paragraph 23, which is extracted below:

“23. Without in any manner meaning to dilute the exhaustive recommendations of the Committee, the substance of the recommendations of the Committee can be summed up to include monitoring of illegal raising and transportation of coal by the Chief Secretary of the State; steps for punitive measures for illegal mining — filling up gaps in the regulatory regime; action for preventing

minimizing and mitigating environment pollution by acidic water from coal depots; electronic recording of movement of coal including by way of GPS and RFID Tags and having a central server for the purpose; inspection of wings of BSF and vigilance department; establishing and supervising check posts and weigh bridges; utilization of the compensation amount for legitimate purposes in terms of the recommendations in the report; continuing Prof. A.K. Singh, nominee, IIT-ISM, Dhanbad as member of the Committee; monitoring of sourcing of illegally mined coal by cement manufacturing/thermal power plants for enforcement of mining law, including punitive and remedial actions for sourcing of illegally mined material, as found by the Committee; conducting necessary audit; study of land use and land cover analysis; drilling of bore holes in Khlihirt-Sutnga area in East Jaintia Hill District; preparation of geological report and feasibility report for scientific coal mining; compiling information about location of dumps of coal; finalizing mode and manner of handling of coal and its disposal including e-auction; transfer of coal to Coal India Limited; monitoring of illegal export of coal to Bangladesh by an independent agency; adopting satellite surveillance systems; action by the State PCB for enforcement of environmental norms; verification of claims of victims and disbursement of payments to them in the manner suggested by the Committee; implementing action plan prepared by the Committee by the State PCB etc. Compliance of all the recommendations may need to be closely monitored by the Committee.”

- 9 None of the appellants were parties to the proceedings before the NGT. It is common ground that the appellants were called upon to submit information to the Committee appointed by the NGT. According to the appellants, the fifth interim report dated 2 December 2019 was uploaded on 8 January 2020 at 1655 hours, following which a hearing took place on 9 January 2020. Neither were the appellants impleaded as parties to the proceedings nor was any notice issued to them to submit objections to the interim reports which were filed before the NGT. Eventually, the NGT, as noted earlier, accepted the recommendations of the Committee.

- 10 Section 19(1) of the National Green Tribunal Act 2010 provides that the NGT shall not be bound by the procedure laid down by the Code of Civil Procedure 1908, but shall be guided by the principles of natural justice. The National Green Tribunal (Practices and Procedures) Rules 2011 provide in Rule 15 for service of notice and processes and in Rule 16 for the filing of replies and other documents by respondents.
- 11 The appellants were not parties before the NGT and did not have the opportunity to deal with the contents of the reports of the Committee appointed by it. The NGT had assigned a fact finding and recommendatory role to the Committee. The ultimate decision on the reports of the Committee had to be taken by the NGT, which could only be arrived at after considering the submissions of the parties, who would be directly affected by the findings of the Committee if they were to be accepted by the NGT.
- 12 Reading the impugned order of the NGT, we do not find any independent application of mind. The Committee, which was chaired by a former Judge of the High Court, had in the view of the NGT, carried out a copious exercise. But that would not obviate the need for the NGT to arrive at its own independent findings after furnishing the parties, who would be directly affected, an opportunity of being heard. The NGT having not done so, we would have to restore the proceedings in relation to the appellants back to the file of the NGT, at the stage, at which they stood prior to the passing of the impugned judgment dated 17 January 2020. Consequently, and to facilitate the above exercise, we set aside the impugned judgment dated 17 January 2020 in relation to its applicability to the appellants before this Court and direct that:

- (i) The appellants shall submit their responses to the interim reports of the Committee appointed by NGT within a period of four weeks;
  - (ii) NGT shall furnish to the appellants an opportunity of being heard, after which it shall proceed to pass orders after dealing with the suggestions and objections of the appellants in accordance with law;
  - (iii) NGT shall take a final decision in three months; and
  - (iv) The appellants would be at liberty to apply to the NGT for inspection of records, including the underlying documents which were submitted by the Committee.
- 13 The appeals shall accordingly stand disposed of.
- 14 Pending application, if any, stands disposed of.

.....CJI.  
[Dr Dhananjaya Y Chandrachud]

.....J.  
[J B Pardiwala]

**New Delhi;**  
**May 02, 2023**  
-S-

ITEM NO.11

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).3280/2020

STAR CEMENT LIMITED &amp; ORS.

Appellant(s)

VERSUS

THE STATE OF MEGHALAYA &amp; ORS.

Respondent(s)

(WITH IA No. 101983/2020 - APPLICATION FOR PERMISSION, IA No. 119002/2022 - CLARIFICATION/DIRECTION, IA No. 87559/2020 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 101998/2020 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 87560/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 87558/2020 - STAY APPLICATION)

WITH

C.A. No. 4144/2020 (XVII)

(WITH IA No. 120345/2020 - EX-PARTE STAY, IA No. 120344/2020 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 2302/2021 (XVII)

(WITH IA No. 69802/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 69801/2021 - STAY APPLICATION)

C.A. No. 2355/2021 (XVII)

(WITH IA No. 72268/2021 - EX-PARTE STAY, IA No. 72271/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 72270/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 72274/2021 - PERMISSION TO FILE LENGTHY LIST OF DATES)

C.A. No. 2726-2727/2021 (XVII)

(WITH IA No. 76856/2021 - EX-PARTE STAY, IA No. 76860/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 76858/2021 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

C.A. No. 4991-4992/2021 (XVII)

(WITH IA No.91889/2021-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.91888/2021-EX-PARTE STAY and IA No.91887/2021-PERMISSION TO FILE APPEAL)

C.A. No. 781/2022 (XVII)

(WITH IA No.3537/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.3536/2022-STAY APPLICATION and IA No.3534/2022-

PERMISSION TO FILE APPEAL)

C.A. No. 3528/2022 (XVII)

(WITH IA No.60554/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.60553/2022-EX-PARTE STAY and IA No.60555/2022-EXEMPTION FROM FILING AFFIDAVIT and IA No.60552/2022-PERMISSION TO FILE SLP)

C.A. No. 4962/2022 (XVII)

(WITH IA No. 85588/2022 - STAY APPLICATION)

Special Leave Petition (Civil) Diary No(s). 22753/2022 (XIV)

(FOR ADMISSION and I.R. and IA No.123797/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.123795/2022-PERMISSION TO FILE SLP, IA No. 187837/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 02-05-2023 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE J.B. PARDIWALA

For Appellant(s)

Mr. Shyam Divan, Sr. Adv.  
Mr. Udayaditya Banerjee, AOR  
Mr. Sudipto Sircar, Adv.  
Ms. Shreya Bhojnagarwala, Adv.

Mr. Pinaki Misra, Sr. Adv.  
Mrs. Vanita Bhargava, Adv.  
Mr. Ajay Bhargava, Adv.  
Mr. Shantanu Chaturvedi, Adv.  
Ms. Purna Singh, Adv.  
M/S. Khaitan & Co., AOR

Mr. Dhruv Mehta, Sr. Adv.  
Mr. Nawneet Vibhaw, Adv.  
Mr. Himanshu Pabreja, Adv.  
Mr. S. S. Shroff, AOR

Mr. Huzefa A Ahmadi, Sr. Adv.  
Mr. E. C. Agrawala, AOR

Dr. Ashok Saraf, Sr. Adv.  
Mr. Kaushik Choudhury, AOR

Mr. Manpreet Singh Lamba, Adv.  
Mr. Pulkit Agarwal, AOR  
Mr. Sanampreet Singh, Adv.

10

Mr. Shivani Sharma, Adv.  
 Mr. Ashutosh Kumar, Adv.  
 Mr. Palav Agarwal, Adv.  
 Mr. Aditya Mishra, Adv.

For Respondent(s) Mr. Avijit Mani Tripathi, AOR

Mr. Saurabh Mishra, AOR  
 Mr. Nirbhaya Tewari, Adv.  
 Mr. Rakesh Chander, Adv.  
 Mr. Abhishek Pandey, Adv.  
 Ms. Priya Kaushik, Adv.

Mr. Avneesh Arputham, AOR  
 Ms. Anuradha Arputham, Adv.

Ms. K. Enatoli Sema, AOR  
 Mr. Amit Kumar Singh, Adv.  
 Ms. Chubalemla Chang, Adv.  
 Mr. Prang Newmai, Adv.

Ms. Richa Kapoor, AOR  
 Mr. Kunal Anand, Adv.  
 Ms. Tusharika Sharma, Adv.

UPON hearing the counsel the Court made the following  
 O R D E R

- 1 The appeals are disposed of in terms of the signed order.
- 2 Pending application, if any, stands disposed of.

**Special Leave Petition (Civil) Diary No 22753 of 2022**

- 3 In view of the order which has been delivered in the batch of appeals<sup>2</sup> listed together with the Special Leave Petition, Mr Shyam Divan, senior counsel, seeks the permission of the Court to withdraw the Special Leave Petition so as to pursue appropriate remedies before the High Court.
- 2 Civil Appeal No 3280 of 2020 etc.

11

- 4 The application for permission to file the Special Leave Petition and the Special Leave Petition are dismissed as withdrawn.

**(SANJAY KUMAR-I)**  
**DEPUTY REGISTRAR**

**(SAROJ KUMARI GAUR)**  
**ASSISTANT REGISTRAR**

**(Signed order is placed on the file)**

1938

*ISGEC Heavy Engineering Limited*

**ANNEXURE R-2**

**72**



**BOILERS**

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Service Visit Report

Of

**M/s Adhunik Cements Limited  
(2 X 56 TPH, AFBC Boiler)**

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*Submitted by  
ISGEC Heavy Engineering Ltd  
A7, Sector-63  
Noida -201301  
[www.isgec.com](http://www.isgec.com)*

Ref No. ACL/01  
Date:-19-03-2014

73

## Feasibility Report for reduction of high LOI in fly ash

- =====
- =====
- **Customer** : M/s Adhunik Cements Ltd .Meghalaya
  - **Boiler Specification:** : 2 X 56 TPH/ 67 Kg/Cm2(g)/490+/-5 Deg C
  - **Type** : Single Drum, Water Tube, AFBC Boiler
  - **Fuel Fired :** : Meghalaya Coal & Washery Rejects
  - **F. W Temp at Eco I/L** : 184 Deg C
  - **ISGEC Engg. on visit** : Mrinal Debnath
  - **Person met** : Mr. N P Barik
- =====
- =====

### 1.0 Background:-

Isgec has supplied Two numbers AFBC Boilers & commissioned in the year of 2010 which was designed for 100% Meghalaya Coal. At present, Washery reject coal and Meghalaya coal are fired with the combination of 60%+40% respectively for 100% MCR steam generation.

M/s.ACL requested M/s. Isgec for "**study to reduce the LOI in the fly ash less than 5% during 100% Washery rejects coal firing**". Isgec personnel visited site to review the boiler parameters from 11.12.13 to 14.12.13.

As per M/s ACL feedback they have replaced the below mentioned boiler components through local resources.

1. Complete Bed coils with bed super heaters in both boilers.
2. Mixing nozzles of PA lines.
3. DCF pocket feeder with higher capacity (Previously motor Power was 0.75 KW, now it is 1.5 KW motor)

## 2.0 Observation during Visit:-

### The following were the observations during the visit:-

1. Plant was running with 46 TPH average load for each boiler with mixed coal firing i.e. 60% Washery Rejects & 40% Meghalaya coal.
2. Oxygen analyzer is not working in Boiler No # 2.
3. New higher capacity pocket feeders were installed in place of Isgec supplied old pocket feeders as it was jamming frequently. Now new pocket feeders are running smoothly.
4. PA line mixing nozzle were replaced as it was eroded.
5. Boiler pressure parts including down comers, MS line spring support were found in locked position which are to be released.
6. GOD duct cracking frequently in both boilers as per customer feedback. It has been found that sling rods are not available as per drawing.
7. FD discharge header (after APH) expansion bellow is in locked condition which is to be cut.
8. In both boilers at roof panel, flue gas leakages found. To be attend in next shut down.
9. ESP 1<sup>st</sup> & 3<sup>rd</sup> field is in charged condition. ESP field -2 & rappers are also not working. Field No: 2 to be rectified.

## 3.0 Action taken :

**On dated 13<sup>th</sup> Feb. 2014 Boiler-1 parameters were tuned as per below mentioned:**

Steam flow -56 TPH
Wind box pressure - 430 mmwc (previously it was 470 mmwc)
PA hdr pressure -1120 mmwc (previously it was 1180 mmwc)
SA damper 25 % opened condition (previously it was closed )

Furnace temperature-726 deg.c (Previously it was 645-670 deg.c)
Bed temperature average- 940 deg.c (Previously it was 760-800 deg.c averages)
FD air flow -74 TPH,
Fuel – 40% Meghalaya coal + 60% Washery rejects.
APH bypass fully closed (it was opened condition previously )

**Boiler ash samples taken after 4 hrs trial & found LOI % as mentioned:**

Eco hopper ash - 5.14%
APH hopper - 3.06%
ESP-1 field - 13.5%.

ESP 2<sup>nd</sup> & 3<sup>rd</sup> field ash found having higher LOI.

**On same dated combined coal (Drag chain feeder) proximate analysis as below:**

TM-5%.
IM-0.83%
VM -27.29%
Ash -45.34 %
FC -26.54 %
GCV-3953 kcal/kg

**Sieve analysis of DCF coal:**

10 mm -1.08%
8 mm- 2.84 %
6 mm- 17.27 %
4 mm- 16.73%
2 mm- 23.84 %
1 mm -0.98 %
<1mm – 38 %

As per above said sieve analysis, We have suggested to provide 6 mm screen in crusher outlet to get proper fluidization. Now they have procured it.

Boiler is already designed with 37 % fines coal. Anyhow Washery rejects coal having low fines at present.

After this parameters changed ECO & APH hopper LOI % reduced but in ESP field ash LOI not changed.

### Boiler parameters on Dated 14.02.14:

<b>Boiler No .01</b>		<b>Boiler No. 02</b>	
MS flow	48 TPH	MS flow	46 TPH
FD air flow	75 TPH	FD air flow	73 TPH
FD Disch. Pr	481 mmwc	FD Disch. Pr	500 mmwc
WB pressure	426 mmwc	WB pressure	440 mmwc
Furnace pressure	-0.8 mmwc	Furnace pressure	-0.8 mmwc
Eco I/L FG draft	-8.6 mmwc	Eco I/L FG draft	-8.6 mmwc
Eco O/L FG draft	-53 mmwc	Eco O/L FG draft	-51 mmwc
<b>APH O/L FG draft</b>	<b>-103 mmwc</b>	<b>APH O/L FG draft</b>	<b>-62.6 mmwc</b>
ID inlet draft	NA	ID inlet draft	-103 mmwc
Hot air temp	138 deg.c	Hot air temp	136 deg.c against 170 deg.c
Ambient temp	27 deg.c		
Furnace temperature	621 deg.c	Furnace temperature	651 deg.c
Eco I/L FG temp	421 deg.c	Eco I/L FG temp	431 deg.c
APH I/L FG temp	238 deg.c	APH I/L FG temp	240 deg.c
ESP I/L FG temp	142 deg.c	ESP I/L FG temp	139 deg.c
ID RPM %	98 %	ID RPM %	94 %
FD RPM %	86 %	FD RPM %	86 %
PA IGV %	100%	PA IGV %	100%
Oxygen	5%	Oxygen	NA
Bed temp	900 deg.c	Bed temp	870 deg.c average

Boiler -1:

FD fan load – 354 amps (FLC -505 amps)
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PA fan load – 55 amps (FLC-91 amps)
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ID fan load 165 amps (FLC -193 amps)
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During trial run it has been observed that below 70 -71 TPH FD air flow bed not fluidizing properly & clinker formation started once we increase the wind box pressure upto 510-520 mmwc.

It also has been observed that boiler No -1 ID fan margin is less due to APH tube choked compared to Boiler -2.

Existing FD & ID fans are 2 x 100%MCR whereas only one no. VFD panel is available for FD as well as ID & hence both FD fans & both ID fans cannot be operated simultaneously.

**On dated 16.01.2014, 100% Washery rejects coal firing trial has been done by customer & during trial customer faced following problems.**

- Bed becoming heavier as fuel having shells.
- Clinker formed due to low fluidization. Air was insufficient for proper fluidization.
- Bed ash draining continuously
- Jamming of PA (CT) line
- Running hours of CHP increased from 10 Hrs to 20 Hrs

Washery Rejects proximate analysis - Provided by customer:

Description	% by weight
Total Moisture	3 - 6%.
Inherent Moisture	0.8%
Fixed Carbon	22 %
Volatile Matter	21 - 25%
Ash	50 - 57 %
Gross Calorific Value	2600 – 3500 Kcal /Kg

#### 4.0 Customer Requirements:

Customer wants to fire 100% Washery rejects & also they are expecting to reduce LOI less than 5% in fly ash for both boilers. Isgec has to suggest required modification for the same.

#### 5.0 Isgec Recommendations:

As required by customer, we have explored the feasibility of firing 100% Washery Rejects & reduction of LOI in fly ash in the existing AFBC boiler.

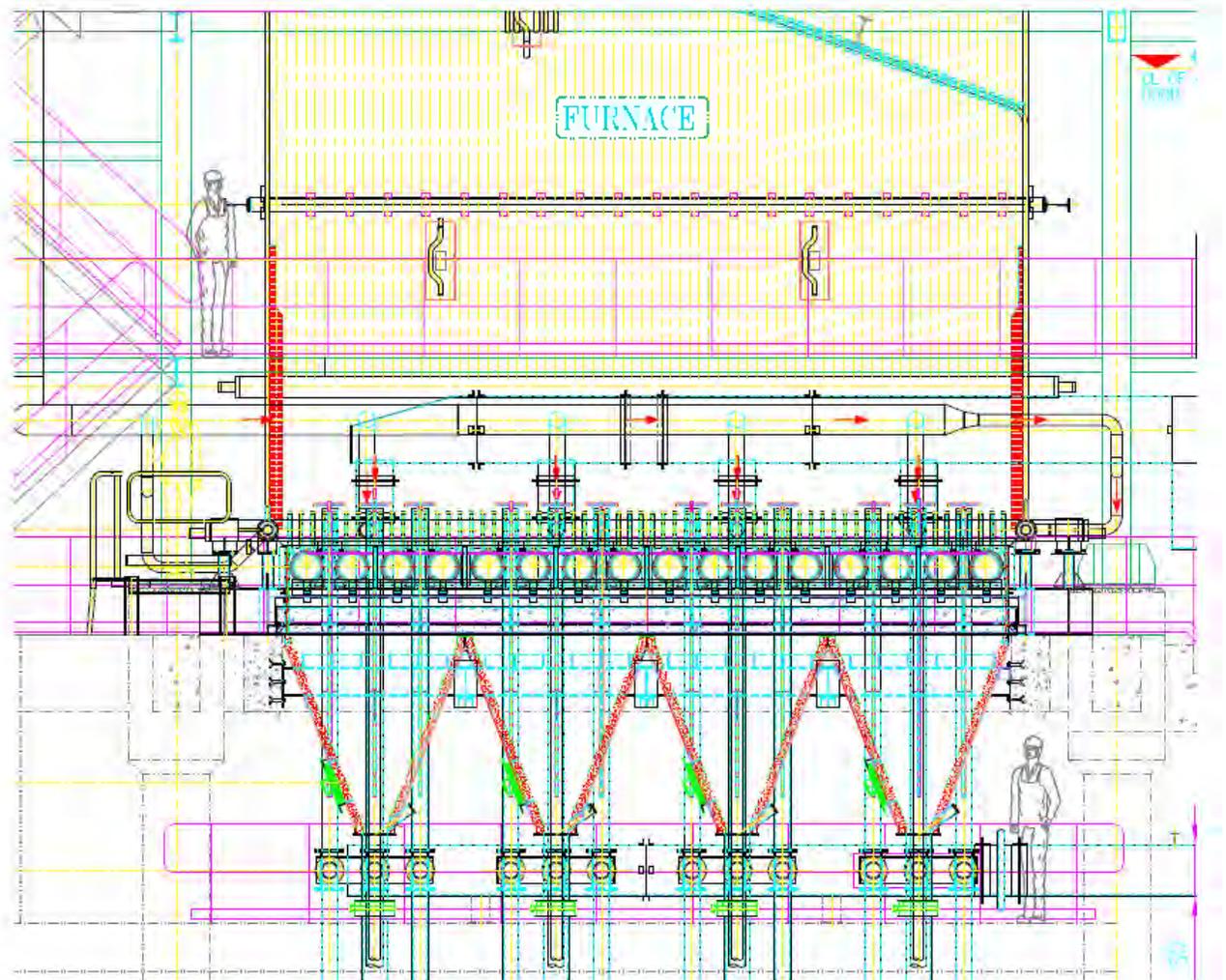
We have converted the provided Washery Rejects proximate analysis into ultimate analysis and the same is furnished here below for your ready reference and confirmation. We feel the provided analysis & GCV of washery reject is superior than the normal washery rejects available in the market. Hence Kindly confirm the analysis and GCV of washery rejects.

Description	% by weight
Carbon	37.41%
Hydrogen	02.31%
Oxygen	01.17%
Sulphur	00.50%
Nitrogen	00.61%
Moisture	03.00%
Ash	55.00 %
Gross Calorific Value	3100 Kcal /Kg

1. Considering the existing available bed size and maximum allowable fluidization velocity in the bed, It is feasible to fire maximum of 80% MCR washery Rejects as stand alone fuel in the existing boiler. Since all four sides of furnace bottom is having RCC tie beams, it is not possible to increase the bed area for 100% MCR washery rejects.
2. It is feasible to reduce the LOI less than 5% in fly ash considering the following modifications / replacements during 80% MCR washery rejects firing.

- Customer shall ensure that the washery reject fuel shall be free from foreign materials to avoid bed becomes heavier. Also kindly ensure the fuel size should be 100% less than 6 mm .
- Existing DB plate along with Air box system will be removed and Hopper Bottom design (Sporger headers along with air nozzles) shall be provided. Refer figure 1.1 for typical Hopper Bottom design & refer figure 1.2 for typical Sporger header with air nozzles.

Figure 1.1



Typical Hopper Bottom design - Elevation  
Figure 1.2



8. Considering 80% Washery Rejects firing, bed coil area needs to be reduced to maintain the desired bed temperature hence some bed coils needs to be plugged.
9. Since 2 x 100%MCR PA fans are available, we have to operate both PA fans simultaneously to convey the washery reject fuel.
10. Existing FD fans are 2 x 100%MCR whereas only one no. VFD panel is available & hence both FD fans cannot be operated simultaneously. For 80% Washery Rejects firing, we have to operate both FD fans & hence one more VFD panel similar to existing VFD panel is to be provided. Necessary incoming supply also shall be provided for new VFD panel.
11. Existing ID fans are 2 x 100%MCR whereas only one no. VFD panel is available & hence both ID fans cannot be operated simultaneously. For 80% Washery Rejects firing, we have to operate both ID fans & hence one more VFD panel similar to existing VFD panel is to be provided. Necessary incoming supply also shall be provided for new VFD panel.
12. Necessary hot air duct one point near furnace area shall be modified inorder to connect the same into proposed Sporger header inlet.
13. During 80% Washery Rejects firing, flue gas velocity at economizer will increase & considering the higher ash% in fuel, it leads to increase the erosion of economizer tubes.
14. ESP second field to be set right to reduce the emission to the maximum extent possible. Even after charging of all fields of ESP emission will be higher side due to higher ash % in the washery reject.
15. Sling rod at the furnace outlet duct shall be installed to avoid frequent cracking of duct.

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI****Original Application No. 73/2014  
And  
M.A. No. 174/2014****All Dimasa Students Union Dima Hasao Dist. Committee  
Vs.  
State of Meghalaya & Ors.****CORAM: HON'BLE MR. JUSTICE DR. P. JYOTHIMANI, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE M.S. NAMBIAR, JUDICIAL MEMBER  
HON'BLE DR. G.K. PANDEY, EXPERT MEMBER  
HON'BLE PROF. (DR.) P.C. MISHRA, EXPERT MEMBER  
HON'BLE MR. RANJAN CHATTERJEE, EXPERT MEMBER****Present: Applicant / Appellant : Mr. Arunabh Chowdhury, Mr. Parthiv Goswami and  
Mr. Karma Dorjee, Advs.**

<b>Date and Remarks</b>	<b>Orders of the Tribunal</b>
<b>Item No. 1</b>  <b>April 17, 2014</b>	<p>We have heard learned Counsel appearing for the applicant.</p> <p>Considering the seriousness of the issue involved in this case, we are of the view that the Department of Mining represented through the Secretary of the State Government of Meghalaya as well as Ministry of Coal, Government of India, New Delhi to be impleaded as party respondent no. 7 to 8. Accordingly, the said parties are impleaded as party respondent no. 7 to 8. Registry to make necessary amendment in this regard. The applicant to file amended copy of the memo of parties.</p> <p>Admit. Issue Notice to the respondents including newly impleaded parties by registered post/acknowledgment due and Dasti as well. Notice returnable by the next date of hearing.</p> <p>Learned Counsel appearing for the applicant who is representing the All Dimasa Students Union and the Dima Hazao Dist. Committee has contended that this sort of rat-hole mining operations have been in practice in the Jaintia Hills of the State of Meghalaya many years without being regulated by any law and</p>

extraction of coal has been made by unscrupulous elements in a most illegal and unscientific manner. It is also informed that there are umpteen number of cases where by virtue of rat-hole mining, during the rainy season, water flooded into the mining areas resulting in death of many number of individuals including employees/workers.

One cannot say that an illegal act having been done for many years must be directed and such act is to be perpetuated and illegality cannot give any cause of action or any right to individual. Learned Counsel for the applicant has also brought to the notice of this Tribunal about the detailed report of Dr. O.P. Singh, Professor, Department Environment Studies, North-Eastern Hills University, Shillong, Meghalaya wherein he has discussed about the entire aspect of the coal mining in the State of Meghalaya. The learned Professor has stated while explaining about the coal mining in Jaintia Hills as follows:

**“4.2.3. Coal Mining in Jaintia Hills”**

*Extraction of coal has been taking place in all three regions, however major production occurs in Jaintia Hills. The mining activity in Jaintia Hills. The mining activity in Jaintia Hill is a small scale venture controlled by individuals who own the land Primitive mining method commonly known as ‘rat-hole’ mining is in practice in Meghalaya. In this method the land is first cleared by cutting and removing the ground vegetation and then digging pits ranging from 5 to 100 m<sup>2</sup> into the ground to reach the coal seam. Thereafter, tunnels are made into the seam sideways to extract he coal which is brought into the pit by using a conical basket or a wheel barrow manually. Coal seams are reached by excavating the side edge of the hill slopes and then coal is extracted through a horizontal tunnel. The coal from the tunnel or pit is taken out and dumped on nearby un-mined area, from where it is carried to the larger dumping places near highways for its trade and transportation.*

*Finally, the coal is carried by trucks to the larger dumping places near highways for its trade and transportation. Entire road sides in and around mining areas are used for piling of coal which is a major source of air, water and soil pollution. Off road movement of trucks and other vehicles in the area causes further damage to the ecology of the area.*

*Every year new areas are brought under mining and area under coal mining in Jaintia Hills is increasing day-by-day as shown in figure 4.5.”*

A reading of the said scientific study made by learned Professor on the subject shows an alarming situation existing in the State of Meghalaya especially in the Jaintia Hills wherein the rat-hole mining has been in practice for a long time. We are of the considered view that such illegal and unscientific method can never be allowed in the interest of maintaining ecological balance of the country and safety of the employees. It is also brought to the notice this Tribunal that by such illegal mining of coal neither the Government nor the people of the country are benefitted. It is only the coal mafias who are getting benefit by following this sort of illegal activities.

We are of the considered view that this act should be condemned and in any event such illegal activities are to be put to an end and the State of Meghalaya should come forward with an appropriate scheme and the statutory rules. Even though, in this application the applicant has restricted himself in respect of rat-hole mining operations in Jaintia Hills of the State of Meghalaya, we are of the view that if in the entire State of Meghalaya such illegal and unscientific operations of rat-hole mining are taking place, the same shall also be put to an end in the interest of people of the area and also people working in the mines for their safety as also for the protection of environment.

Accordingly, while admitting the application, we direct the Chief Secretary, Government of Meghalaya and the Director General of Police, State of Meghalaya to ensure that rat-hole mining/illegal mining is stopped forthwith throughout the State of Meghalaya and any illegal transport of coal shall not take place until further orders passed by this Tribunal. The Director General of Police, State of Meghalaya is also directed to report to this Tribunal about the compliance of the order by the next date of hearing.

Stand over to 19<sup>th</sup> May, 2014.

Registry to issue copy of this order by Dasti.

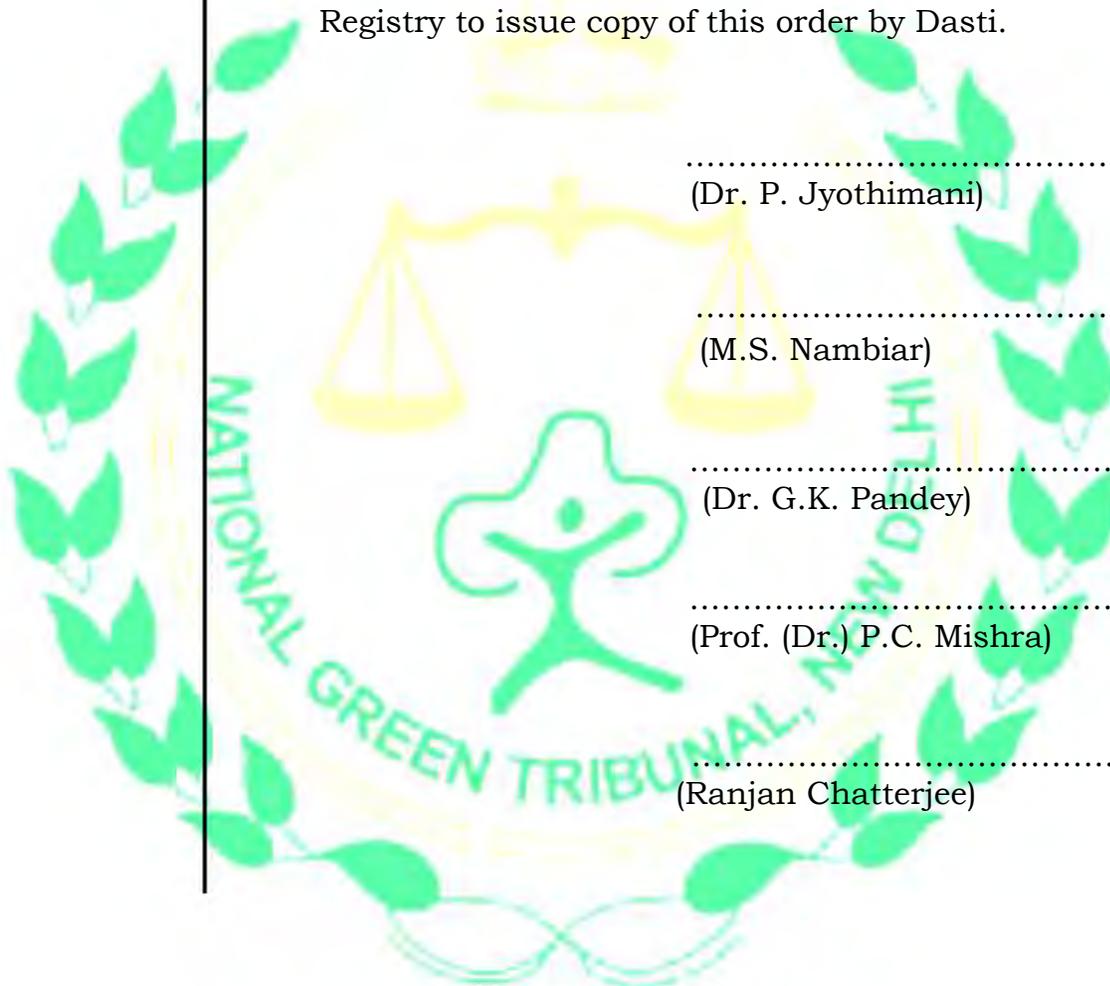
....., JM  
(Dr. P. Jyothimani)

....., JM  
(M.S. Nambiar)

....., EM  
(Dr. G.K. Pandey)

....., EM  
(Prof. (Dr.) P.C. Mishra)

....., EM  
(Ranjan Chatterjee)



1952  
**ANNEXURE R-4**

**BEFORE THE NATIONAL GREEN TRIBUNAL,  
Circuit Bench at High Court of Meghalaya,  
Shillong**

**Original Application No. 13 of 2014  
And  
Original Application No. 73 of 2014  
And  
M. A. No. 174 of 2014, M. A. No. 294 of 2014, M. A. No. 300 of 2014,  
M. A. No. 317 of 2014, M.A. No. 352/2014, M.A. No. 371/2014 &  
M. A. No. 318 of 2014  
In  
Original Application No. 73 of 2014**

**IN THE MATTER OF :**

**Impulse NGO Network Vs. State of Meghalaya & Ors.  
And  
All Dimasa Students Union Dima Hasao Dist. Committee  
Vs.  
State of Meghalaya & Ors.**

**CORAM : HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON  
HON'BLE MR. RANJAN CHATTERJEE, EXPERT MEMBER**

**Present:**

**Original Application No. 13 of 2014**  
**Applicant:** Mr. Raj Panjwani, Sr. Advocate along with Mr. Aagney Sail and Ms. Hasina Kharbhih, Advocate  
**Respondent No.1:** Mr. Ranajan, Mukherjee, Ms. Aprajita Mukherjee, Advs. with Sh. R. P. Marak, Director of Mineral Resources  
**Respondent No2:** Mr. Tayenjam Momo Singh, Advocate  
**Respondent No3:** Mr. SubhroSanyal, Advocate  
**Respondent No. 4:** Ms. P. Batra Singh, Advocate

**(Original Application No. 73 of 2014)**  
**Applicant:** Mr. Arunabh Chowdhury, Mr. Parthiv Kr. Goswami and Barnali Chowdhury, Advs.  
**Respondent No.1:** Mr. Pinaki Mishra, Sr. Adv. with Mr. Ranjan Mukherjee, Advocate and Ms. Aprajita Mukherjee, Advocate, Sh. C.K. Marak, Dy. Secy. Mining & Geology, Meghalaya Govt.  
**Respondent No. 3:** Mr. Avijit Roy and Ms. Kankana Arandhara, Advs.  
**Respondent No. 4** Mr. Himmka Baruah, Adv.  
**Respondent No. 5:** Smti Purabi Sarma, Adv.  
**MoEF:** Ms. P. Batra Singh, Adv.  
**Respondent No. 9:** Mr. Nitesh, Mr. Dharitry Phokan, Advs.  
**Respondent No. 10:** Mr. H.S. Thanj Khiew, Sr. Adv. with Pyllang Mr. Nongbri and hilemon Nongbri, Advs.  
**Respondent No. 11:** Mr. K.K. Sharma, Sr. Adv. and Mr. Pragyan Sharma, Mr. S.P. Mabanta and Mr. ODV Ladia, Advs.

Date and Remarks	Orders of the Tribunal
Item Nos. 2&3 June 9, 2014	<p style="text-align: center;"><b>The Original Application No. 13/2014 and Original Application No. 73/2014.</b></p> <p style="text-align: center;">Both the above applications shall be heard and decided together. Even in the Original Application No. 110 (Thc)/2012, the documents filed,</p>

in so far as they are related to these two cases, shall be read as part of this file.

List the matters on 1<sup>st</sup> August, 2014 at Shillong.

**M.A. No. 317/2014**

This is a miscellaneous application filed by the Western Coal Miners and Exporters Association through Secretary for their impleadment in the main application, Original Application No. 73/2014, as they claim that their interests are likely to be affected by the orders that this Tribunal may pass during the pendency and/or disposal of the main application.

None of the Counsel appearing for the non-applicants has any objection. Consequently, M.A. No. 317/2014 is allowed subject to just exception. They are ordered to be impleaded as Respondents in the main application.

Liberty is granted to file reply to the main application within three weeks from today with advance copy to the Counsel appearing for the applicant who may file rejoinder thereto, if any, within two weeks thereafter.

M.A. No. 317/2014 is accordingly disposed of.

**M.A. No. 352 / 2014**

This is a miscellaneous application filed by the State Coordination Committee of Coal Owners, Miners and Dealers Forum, East Khasi Hills District Meghalaya for their impleadment in the main application, Original Application No. 73/2014, as they claim that their interests are likely to be affected by the orders that this Tribunal may pass, during the pendency and/or disposal of the main application.

None of the Counsel for the non-applicants has any objection. Consequently, M.A. No. 352/2014 is allowed subject to just exception. They are ordered to be impleaded as Respondents in the main application.

Liberty is granted to file reply to the main application within three weeks from today with advance copy to the Counsel appearing for the applicant who may file rejoinder thereto, if any, within two weeks

thereafter.

M.A. No. 352/2014 is accordingly disposed of.

**M.A. No. 371/2014**

This is a miscellaneous application filed by the State Coordination Committee of Coal Owners Miners and Dealers Forum, East Khasi Hills District Meghalaya for exemption from filing certified copy of order dated 17.04.2014 and modification is sought for.

The application is allowed subject to just exception that certified copy be filed in due course.

M.A. No. 371/2014 is accordingly disposed of.

**M.A. No. 318/2014, M.A. No. 294/2014 and M.A. No. 300/2014**

In all these miscellaneous applications, the applicants pray for modification/vacation of the order passed by this Tribunal on 17.04.2014. Vide our order dated 17.04.2014, we had directed that State of Meghalaya shall ensure that rat-hole mining is stopped forthwith through-out the State of Meghalaya and any illegal transportation of coal shall not take place until further orders passed by this Tribunal. Against this order, some of the parties had preferred a civil appeal before the Hon'ble Supreme Court of India which came to be dismissed vide order dated 19.05.2014 passed by the Hon'ble Supreme Court of India. However, the Hon'ble Supreme Court of India had granted liberty to the applicants to approach the Tribunal for variations of the order dated 14.05.2014, if they so desire.

We have heard the learned Counsel appearing for the various respondents in all these petitions at some length.

There is not and, in fact, cannot be any dispute that there has been serious air, water and environmental pollution being caused by the illegal, unregulated and indiscriminate rat-hole mining being carried on in various parts of the State of Meghalaya and an attempt is made to say that in some parts particularly towards Khasi Hills, the pollution is less. This is also disputed by the Counsel appearing for the State Pollution Control Board on the plea that what has been referred to is the resultant

pollution to the downstream, there is also serious pollution to the upstream even in that area. Be that as it may, the *factum* of the pollution remains undisputed.

There are documents on record before us to show that right from the year 2003, that there has been serious air and water pollution in the mining areas of Meghalaya which is injurious and has not only resulted in degradation of environment, particularly the streams and underground water, but has also seriously jeopardized the human health. Transportation of coal in an illegal, unregulated, indiscriminate and unscientific manner has resulted in serious diseases to the people, particularly involved in the mining activity in the different districts of the State of Meghalaya.

In the report of 2003 prepared by the Pollution Control Board, it has been stated that the coal mine workers are suffering from diseases such as malaria, skin diseases, tuberculosis, and lung cancer. The environmental degradation & deterioration does not end here. In a very recent inspection conducted by a joint team of the Central Pollution Control Board (CPCB) and the Meghalaya State Pollution Control Board (MSPCB), it has been noticed that the stream water, ground water and the environment in general has been seriously damaged and no measures have been taken by any of the authorities, including the State Government, to remedy the continuing degradation.

In the report submitted to this Tribunal by its Committee dated 09.06.2014 which is founded upon the Minutes recorded by the Committee during its inspections on 17.04.2014, 29.04.2014, 06.05.2014 and 13.05.2014 in different areas of the State of Meghalaya. In this report at page 11 with photographs, it has been said "*the effluent in the mines below is pumped out via PVC/plastics pipes onto a tank and from there is then discharged out into the nearest stream (or river)*". In the joint inspection report at this stage, we may refer to the comments made by the joint inspection team in its report as placed below:

*"After sampling and analysis of active coal mines in Garo, West Khasi and East Jaintia Hills, it found that the pH of mine water effluent / acid mine drainage (AMD) remain very low and found less than 3 in all the cases. These AMDs are pumped out from the mines and*

*discharged into nearby streams or river. This has polluted most of the rivers and streams in the mining areas by turning the water highly acidic.*

*The AMD generated from the coal dumping yards are highly acidic and they also contribute equally to the surface water pollution in the mining areas.*

*The discharge of acid mine drainage (AMD) from the coal mines (active and abandoned) and the surface runoff from the coal dumping yards are the root cause of the water pollution in the area. All the surface water bodies in the area have become highly acidic. Most of the cases, pH level in mine water and surface water are becoming even lesser than three (3) and in that low level of pH, it is understood that no aquatic life can sustain.*

*So far there is no control over the miners by any of the regulatory bodies. There is immediate need for enforcing treatment of AMDs and reclamation of the abandoned mines. Measures for neutralization of AMDs from the coal dumping yards to be regulate.*

*Out of 21 parameters analyzed, the pH level of water is alarming. Most of the parameters analyzed are within the limits desirable for drinking water as per IS 1991 except Iron, which level is also very high in most of the samples analyzed.”*

Besides the above observations of the technical experts, the Applicants in original application no. 73/2014 has specifically alleged that Kopili river is seriously polluted by discharge of various effluents from the acid mine drainage and the colour of the river water has become dark brown and this has also affected the sources of drinking water of the areas in question. Of course, this is disputed by the coal mine owners.

The above inspection reports and constant history of the area shows, at least prima facie, that there is serious pollution resulting from carrying on of illegal mining activity in various districts of the State. It also remains undisputed by all the Applicants/Associations that none of them have sought consent/permission of the Pollution Control Board to carry on the mining activity. It is also not disputed that the mining activity is being carried on without permission from any governmental authority/body and in fact, it is an unregulated activity. The activity is neither being supervised nor scientifically regulated by any authority under the State or the State Pollution Control Board. The provisions of the Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 are in force in this area. Furthermore, the Mines and Minerals (Development and Regulation) Act, 1957 is in force and even

the State Government has formulated a Mining Policy in the year 2012 whereby mining activity is to be carried on in consonance with law and the statutory provisions. The whole emphasis is that it is a customary activity which has been in force for so many years and the people have unquestionable right to carry on like this even without compliance to any of the environment or regulatory laws.

We are not at all impressed by the contentions. Whether these are private mines or they are mines which are on the lands other than private lands, yet they cannot carry on this activity in an unregulated, indiscriminate and illegal manner without compliance with the laws in force. At this stage, even if we overlook the legal issues relating to the claimed right of carrying on with the mining activity, still in the interest of environment and public health, this activity cannot be permitted to be carried on in that manner its presently carried on. Thus, we refuse to modify the order dated 17.04.2014. The State would ensure that no unregulated, illegal, indiscriminate mining is carried on by any person in the State of Meghalaya and all the mines shall be sealed forthwith as per law. The Deputy Commissioner and Superintendent of Police of their respective districts shall be liable to comply with this order.

The question that has been vehemently argued before us is that the orders of NGT have adversely affected the economy of the State. On behalf of the Counsel of the districts, it is contended that their major source of revenue is the royalty assets that is received from the State which is recovered from the mining activity. Generally it is contended that large number of persons are dependent for their livelihood on the coal related activities and if the transport of already extracted coal is also prohibited, it will cause serious damage to the economy and hurt the livelihood of the people of the State of Meghalaya. It is also stated that huge quantity of extracted coal is stored near the mines and if they are not removed at the earliest, they will cause further environmental hazards and are also likely to be wiped away by the heavy rains in this area for a prolonged period. This may result in further pollution of the rivers, groundwater, adversely affect the public health and would also cause

great loss to the nation besides causing injury to the economy of the area. This is also contended on behalf of State Government and the Applicants.

Having examined the cumulative effect of the contentions raised before us, the applicant contends that even if this is to be permitted, it must be in strict terms, entirely regulated and should be carried on in a scientific manner.

We are of the considered view that to a limited extent, we should permit the transportation of the already extracted coal lying in open near the mining sites. However, such removal shall be subject to strict supervision and directions of the following Committee and the terms and conditions of this Order:-

(I) We hereby constitute a Committee of the following:

- (1) Director of Mines, Meghalaya.
- (2) Member Secretary, Meghalaya State Pollution Control Board.
- (3) Members Secretary, Assam State Pollution Control Board.
- (4) Sr. Scientist of the Central Pollution Control Board.
- (5) Sr. Representative of Ministry of Environment & Forests.
- (6) Principal Secretary, Mining & Geology Dept. Government of Meghalaya.

(II) The above Committee shall, within one week from today, conduct inspection of all the mining sites in the concerned districts of the State of Meghalaya. They shall quantify the extracted coal and the location thereof. The Committee shall also state the proximate value of the coal presently lying in the open. No coal shall be transported before this report is submitted to the NGT and is examined by the Government as well.

(III) For this purpose, they would be entitled to engage any expert in the field, if they so require. The entire administration of State of Meghalaya shall provide full assistance to this Committee.

(IV) This Committee shall further prescribe the mode of transportation of the extracted coal with due regard to the safeguards and protections that the transporter should take, both in regard to the health of the public at large, the workers involved in transportation and the general

environment. The procedure so prescribed shall be duly provided for.

(V) The carriage and transportation of coal would be done strictly in terms of the conditions imposed by the aforesaid Committee and not otherwise. There is serious variation in the amount or extent of the extracted coal lying open near the mines. According to the State, it is 3.4 million metric tonnes while according to the Applicant, it is approximately 9 million metric tonnes. This variation has to be reconciled before any coal is permitted to be transported by the authorities concerned.

(VI) The Committee shall fix two check-points *en route* transportation of the extracted coal from the point of loading to the point of destination. In addition, there shall be an exclusively devoted check point at the borders of Bangladesh and the State of Assam. Due records shall be maintained by these check points. Further the mine-owners would also maintain the records which will be subject to check and verification by the staff of the concerned authorities in the State Government. The records shall state the quantity of coal loaded, quantity transported, quantity received at destination and particularly at the border of the State. We are permitting the transportation of extracted coal lying near the mines, only for a period of three months and would consider enlargement of such period or passing of such other directions at a subsequent stage.

(VII) We direct the Committee above appointed under clause (I) to submit a detailed report in regard to the pollution of rivers, streams, groundwater in and around these mining pockets, the damage already done to the environment and ecology of the areas, the damage to the people who are suffering from various diseases due to this pollution. The State Government shall immediately direct taking of such steps and measures to ensure medical aid and health care to the people adversely affected in the mining areas

(VIII) The State may also take steps to inform the public so that steps for preventive health care, particularly of the younger generation of the State, could be taken. After the report is received, we would consider the matter in relation to issuance of notice to all the mine owners as to why they

should not be called upon to pay compensation for restoration of environment, health and ecology.

(IX) The Authorities will ensure that the trucks carrying or transporting coal are not overloaded at all. The transportation should be in a scientific way and the trucks should be fully covered to ensure that the coal dust does not pollute the area.

(X) The State Government and all its authorities shall fix weighing machines at all exit points from Meghalaya, particularly towards Assam and Bangladesh. The Secretary, Transport, Government of Meghalaya will ensure strict compliance of the weight restrictions as per law.

(XI) We further direct the Chief Secretary and Secretary, Mining & Geology of the State of Meghalaya to take up the matter with the Secretary, MoEF and the Secretary, Coal, Government of India and finalize the coal mining plan in the State of Meghalaya at the earliest, the law which ought to have been complied with before carrying on the mining activity and the manner in which the mining activity, if at all, could be permitted in the State of Meghalaya.

(XII) We also grant liberty to the Applicants and for that matter all persons claiming to be owners of the coal mines in the State of Meghalaya to apply for obtaining consent of the State Board and SEIAA or MoEF, as the case may be, within one month from today. If such applications are moved, they shall be disposed of, in accordance with law expeditiously.

(XIII) We hereby direct the said authorities i.e. Chief Secretary, Meghalaya, the Secretary, MoEF and the Secretary, Coal in Government of India to approve a health plan that should be prepared by the State of Meghalaya within one month from today which shall specify all measures which ought to be taken to protect the health of the persons involved in the mining activity transportation of coal and even the residents of the villages who are residing in and around such areas.

(XIV) The State Government shall take into consideration, if necessary, the views of the local Councils while preparing the plan for protection, prevention of environment, control of pollution and public health and other requirements in that behalf. Let this exercise be taken up at the

earliest.

(XV) The records would be maintained not only on what we have indicated above but shall be maintained regarding royalty and revenue received by the State Government for transportation of coal, strictly in terms of the above order. The amount so received by the State Government would be shared with the District Councils as per the administrative policy but major part of the royalty that the State receives must be retained for the expenses to be spent for environmental projects for protecting further degradation of the environment, its restoration and ensuring protection of public health.

All parties are granted liberty to file replies to the main petitions, as already noticed. Both the cases shall be heard jointly. Therefore, parties have been granted opportunity to file the common replies and documents, if they so desire.

Accordingly, all the above miscellaneous applications are partly allowed to the limited extent afore-stated.

List the main applications on 1<sup>st</sup> August, 2014 at Shillong.

.....,CP  
(Swatanter Kumar)

.....,EM  
(RanjanChatterjee)

**ANNEXURE R-5**

BEFORE THE NATIONAL GREEN TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI

M.A. NO. 92 of 2015, M.A. NO. 95 of 2015, M.A. NO. 96 of 2015, M.A. NO. 112 of 2015, M.A. NO. 116 of 2015, M.A. NO. 152 of 2015, M.A. NO. 153 of 2015, M.A. NO. 184 of 2015, M.A. NO. 185 of 2015 & M.A. NO. 245 of 2015

In  
Original Application No. 73 of 2014  
And  
M. A. NO. 154 OF 2015  
IN  
Original Application No. 13 of 2014

**IN THE MATTER OF :**

All Dimasa Students Union Dima Hasao Dist. Committee  
Vs.  
State of Meghalaya & Ors.  
And  
Impulse NGO Network Vs. State of Meghalaya & Ors.

**CORAM :** HON'BLE MR. JUSTICE SWATANTER KUMAR, CHAIRPERSON  
HON'BLE MR. JUSTICE U.D. SALVI, JUDICIAL MEMBER  
HON'BLE MR. DR. D.K. AGRAWAL, EXPERT MEMBER  
HON'BLE PROF. A.R. YOUSUF, EXPERT MEMBER  
HON'BLE MR. BIKRAM SINGH SAJWAN, EXPERT MEMBER

**Original Application No. 73 of 2014**

**Present:** Amicus Curie: Mr. Raj Panjwani, Sr. Adv. with Mr. Aagney Sail, Advs.  
Ms. Shaurya Sahay Applicant in M.A.152 & 153/2015  
Mr. Rajiv Dutta, Sr. Adv. along with Mr. Saurabh Sharma, Adv. Applicant in MA No. 96 of 2015  
Respondent No. 2: Mr. Tayenjam Momo Singh, Adv. for MSPCB  
Respondent No. 5: Ms. Panchajanya Batra Singh, Adv. MoEF & CC  
Respondent No. 10: Mr. H.S. Thangkhien, Sr. Adv. along with Mr. Philemon Nongbri Adv. in M.A. No. 92/15  
Respondent No. 11 : Dr. O.D.V. Ladia, Sr. Adv. with Mr. Philemon Nongbri, Adv.  
Mr. R. Biswas, Adv. in M.A. No. 955 OF 2015 & Mr. A. Paul, Adv., in M.A. No. 185 of 2015  
Mr. Vijay Panjwani, Adv. for Mr. Thomas Nongbri and Mr. S.K. Rai, Adv. in M.A. Nos. 111 of 2015 & 112 of 2015

**Original Application No. 13 of 2014**

**Present:** Amicus Curie: Mr. Raj Panjwani, Sr. Adv. with Mr. Aagney Sail, Adv.  
Ms. Shaurya Sahay Applicant in M.A.152 & 154/2015  
Respondent No. 2: Mr. Tayenjam Momo Singh, Adv. for MSPCB

	Date and Remarks	Orders of the Tribunal
	<b>Item No.</b> 01-02  <b>March 25,</b> 2015	Rampant, illegal, unscientific and life threatening mining activity, particularly Rat hole mining is going on in the State of Meghalaya for years now. Truly, it was unregulated, uncontrolled and unchecked. This has <i>inter-alia</i> the following adverse impacts:-

(a) It causes serious pollution of river and water bodies due to acidic nature of the effluent besides causing environmental degradation and environmental hazards having injurious impacts upon human health.

(b) Adverse impacts on ecology and environment of the entire State, particularly in the mining areas has brought about climate change. Most significantly, it has resulted in deaths of the young generation involved in the mining activity. In fact, it was the death of 15 young labourers in the mine that had persuaded the High Court of Gauhati to take *suo-moto* action. It was this petition that has been transferred to the Tribunal. This Application has been numbered as Original Application 73 of 2014 (Suo-Moto) and urges stoppage of illegal mining activity in the State of Meghalaya, particularly in district Jaintia Hill forthwith and for appointment of a committee to carry out the assessment of the impact of illegal mining and determination of the damage to the environment.

In the above circumstances, the Tribunal, vide its order dated 17<sup>th</sup> April, 2014 had directed the authorities to ensure that Rat hole mining and illegal mining is stopped forthwith throughout the State of Meghalaya, as well as the illegal transportation of coal does not take place. After notice to all concerned, the Tribunal had also constituted a committee. It was noticed that pH of mine effluent/mine drainage remained very low and was found less than 3 in all cases out of the 21 samples analysed.

It was also noticed that the effluent from the mines, was being pumped out via PVC-Plastic pipe into the tank and thereafter discharged into the nearest stream or river. These details have been noticed by the Tribunal in its order dated 09<sup>th</sup> June, 2014.

We also noticed that transportation of coal was being done in the most unscientific manner, openly, without any check or precaution for protecting the environment. To put it simply, the transportation of coal was in flagrant violation of environmental norms. This resulted in passing of the injunctive order by the Tribunal. A specific report had also been called for in relation to the pollution of rivers/streams and groundwater in and around the pockets where mining activity was being carried out. The committee was expected to submit a report in relation to damage done to the environment and ecology of the area and to public health, i.e., the health of people who were living around the mines and were consuming the highly polluted water for their day to day needs as well as the diseases suffered by them.

Vide these orders, number of directions were issued, including those for installation of weighbridges, adoption of appropriate measures for environmental protection during transportation and the committee constituted was to recommend and frame the guidelines for transportation of the coal which has already been extracted and was lying around the mines in question.

Before we proceed further, it will be significant to note that the incident of 06<sup>th</sup> July, 2012 was in relation to 30 labourers who were trapped in the Rat hole mine in

South Garo Hills, out of which 15 could escape mine flooding and 15 others reportedly died, leading to registration of crime punishable under section 304A of the Indian Penal Code.

In furtherance to the order of Tribunal, the appointed committee had conducted inquiry and found that huge quantity of extracted coal was lying near the coal mines. It further noticed that there was serious variation in the quantity of coal declared to be extracted by the mine owners and the physically assessed quantity of extracted coal by the mine owners. It was stated that 36,59,152 MT of coal had been declared to be extracted by the mine owners and upon assessment by the committee it was found to be 37,36,325 MT. It was also pointed out that the extracted coal declared by the miner, which could not be verified, weighed 87,85,147 MT. The value of the extracted coal was stated to be approximately Rs. 18,000 crore. On subsequent dates, the committee informed the Tribunal that on physical verification 6.3 MT of extracted coal valued at Rs. 3078 crores is lying in the State of Meghalaya and was expected to fetch royalty of approximately Rs. 400 crore.

During the course of arguments before us, we found from the statement filed on behalf of the State that the State of Meghalaya has permitted 17,83,359 MT coal to be transported in terms of the directions of the Tribunal and recommendation made by the committee. If the above quantum of coal is taken as correct at its face value and is multiplied by approximate value of coal per metric tonne as earlier determined by the State and as mentioned in the

report, the value of the total coal comes to Rs. 35,67,18,000, which means that out of the coal which is worth more than Rs. 3000 crore found to be lying, only coal which is worth Rs. 356 crore approximately has been permitted to be transported leaving the balance of coal worth Rs. 2644 crore.

The State of Meghalaya has promulgated a mining policy of 2012, which does not deal with rat hole mining, but on the contrary, deprecates it. Considering its illegal, unscientific and unregulated character and its obvious adverse impact on various facets of environment, life and even economy of the state, we had through our various orders, directed the committee to be constituted and the State Government to formulate and declare mining policy and prepare guidelines for the State of Meghalaya which was expected to deal with all the aspects of mining without exception. The formulation of such policy and guidelines for the State has yet to see the light of the day.

Some of the interested parties had filed a Special Leave Petition (SLP) along with Statutory Appeal before the Hon'ble Supreme Court of India against the interim order passed by the Tribunal. The Appeal preferred (D.No. 2198 of 2014) came to be dismissed vide order dated 02<sup>nd</sup> February, 2015 passed in SLP Appeal titled as LBER LALOO Vs. ALL DIMASA STUDENTS UNION & ORS. However, the Hon'ble Supreme Court of India vide the said order observed that the Applications before the Tribunal should be disposed of expeditiously.

It is undisputable that orders of the Tribunal have been violated without exception. The transportation of

coal has continued without taking any environmental protection measures and without strictly complying with the guidelines framed by the committee and the State of Meghalaya. The illegal mining has been going on despite specific and complete prohibitory orders. The State Government has failed to check illegal mining effectively and has also not framed the mining policy, mining plan and the guidelines as directed under the orders of the Tribunal.

The violations are not only apparent from the record but find due support from the facts placed on record by the State Government itself. The State Government has found as many as 73 cases of illegal transportation of coal in one district. In furtherance thereto, 15 more case of specific violation of the NGT orders had already been registered by the State Government. The total number of vehicles sealed are 87 in relation to one district i.e. East Jaintia Hill. As per the statement furnished by the State in all the 11 districts of the State of Meghalaya, 308 cases of violation have been registered and a total number of 605 trucks and 2675.63 Tonnes of coal has been seized in addition to 40 Bags of coal. There are apparently no plans/guidelines framed by the State as of now. As far as the violation by individuals before us are concerned, we will deal with them separately. However, as far as State is concerned, as regards non-compliance and its inability to execute and comply with the directions of the Tribunal, the following *inter-alia* primary grounds are submitted

(a) lack of forces to carryout counter insurgency operations and implementation of NGT orders.

(b) The State Government proposes to approach the Central Government for claiming an exemption, in terms of para 12 A (b) of the VI<sup>th</sup> Schedule of the Constitution of India and from the condition of previous approval of the Central Government under the Mine and Mineral Rule Regulation Act, 1957 in respect of reconnaissance, prospecting and mining of coal and from the operations of Coal Mines Nationalization Act.

We find no merit in either of them. Firstly, a year or more has lapsed since the directions and orders have been passed by the Tribunal and at no point of time, except now, that the State Government has put forward this ground of its incapability for compliance of the order of the Tribunal. The orders of the Tribunal are required to be enforced without exception particularly when such directions relate to environment and human life which are of fundamental value and are, in fact enshrined as the Fundamental Right in Part III under Article 21 of the Constitution of India. Despite this view, we have permitted the State Government to approach the Secretary, Home, Coal and MoEF and/or to the concerned Authority in the Central Government to request for deployment of appropriate forces so that not only the orders of the Tribunal are complied with, but property of the State and environment is protected and no illegal and unscientific mining contrary to law is permitted to be carried on in the state.

We are informed that the Secretary, Mine and Geology, State of Meghalya, met the Additional Secretary

and Joint Secretary in the Ministry of Home, who has asked for appropriate proposals to be sent to him for his consideration. In light of the above, we pass the following directions.

1. The Additional Secretary, North East in the Ministry of Home, Central Government shall, within a period of two weeks from today, hold a meeting with the Chief Secretary of the State of Meghalaya and other concerned Authorities and consider the proposal of the State of Meghalaya for deployment of appropriate force to ensure compliance of orders of the Tribunal and protection of the Environment and Ecology, particularly water bodies as recorded in various orders of the Tribunal. We are hopeful, that the decision will be taken objectively and in the interest of public at large.
2. Without hesitation, we record our disapproval, for the said conduct of the State of Meghalaya in not formulating appropriate policy and guidelines despite orders of the Tribunal, even after lapse of a period of one year,. The mining in the State cannot be permitted till the time such policy and mining plan/map is prepared by the State Government. This would be the requirement whether the mines are private or State owned and/or whether the State is granted exemption by the Central Government/Parliament in accordance with the law or not. Neither of this can be raised as a defense for permitting illegal, unscientific and unregulated mining in the State which would not only endanger

the ecology, environment, water bodies in the area, but, would be fatal to human life also. Thus, in this regard we issue the following directions.

The Special Secretary/Additional Secretary of Ministry of Coal and MoEF would be approached by the Chief Secretary of the State of Meghalaya for any appropriate legal framework for exemption as they deem fit and proper but in any event this committee shall ensure that the State of Meghalaya prepares and places before both the Special Secretary and Additional Secretary of the Government of India, a road map/policy of mining and guidelines for carrying out mining activity in the State of Meghalaya within 6 weeks from today. This would be examined and appropriate decision would be taken collectively by the State of Meghalaya and Central Government. We make it clear and as already directed in our order, we would be able to permit the mining activity in the State only when such plan/guidelines are placed before the Tribunal and are enforced in the State of Meghalaya.

As it is practical and admitted case before us that illegal mining, particularly Rat hole mining, is still being carried on in various parts of the State of Meghalaya, despite clear orders issued by the Tribunal, which have not been even disturbed on Appeal by the Hon'ble Supreme Court of India.

We may notice that vide its order dated 29<sup>th</sup> January, 2015, the Tribunal had appointed Local Commissioners to inspect the mining sites and

transportation activity in the State of Meghalaya. Three Commissioners had collectively inspected the site in the areas of East Jaintia hills of Meghalaya and have made serious observations in regard to the violation of the orders of the Tribunal. It has been specifically recorded that they found fresh coal extracted and being carried in the garb of transportation. *Inter-alia* they noticed that top most layer was fresh and dark in color. They filed various photographs in relation to various sites. Photographs No. 10 and 13 clearly depict that rat hole mining is still being carried on in the most unscientific impermissible manner, in violation of environmental norms and in the manner injurious to human health. The videography has been prepared and filed by the Local Commissioners. We may refer to abstract of the joint report filed by the Local Commissioners as under:

*“The first instance of open violation of the National Green Tribunal’s order banning rat-hole mining was witnessed at Kongong village, East Jaintia Hill District, where newly extracted coal were being unloaded from trucks to replenish the existing stock. Upon inquiry the laborers’ disclosed that the coal was brought in from the mines located in Krem Koin village and Wah Shyrpi village (mines owned by Mr. Sarki Phawa and Prakash Phawa – locations not known). Meanwhile, one of the concerned Mine Owner, Mr. Sarki Phawa somehow got wind of the presence of the Local Commissioners’ in his area and drove up to the site in his 4x4 Jeep (Maruti Gypsy ML-05K-0923 refer*

**photo file no.3.** Upon further enquiry with him as to why the fresh stock of coal from the two trucks – bearing registration No. MA-04-A-9250 and ML-04-B-5502 (**photo file no.2**) was being unloaded at his storage site. He defended himself by stating that he had deposited revenue with the Directorate of Mineral Resources for 2000 MT of coal in advance however he was unable to transport the stated quantity he had already paid for before the deadline expired. His answer to the above question posed by the local commissioners was evasive and unsatisfactory.

In another instance Local Commissioner J.B. Kharbhih spoke to one Mr. Prakash Phawa over phone. He revealed that one Mr. Nip Dkhar another mine owner known to him was not able to transport the remaining 322 MT of coal he paid royalty for to the Directorate of Mineral Resources. He too ran out of time during the temporary relaxation of the ban to transport the same. By observing this trend and the evasive explanations it is strongly suspected that royalty to the State was paid not so much only on the declared stock of extracted coal but also on the quantity of coal yet to be extracted and hence mining activity continues in violation of the **Hon'ble Natioal Green Tribunal's** order banning rat-hole mining. There is a hunch of a sinister practice-specially with regard to declaration and assessment of extracted coal, payment of royalties, acquiring of challans and

*transportation of coal – the complete understanding of which is beyond the scope of the local commissioners at this stage.*

*Homogenous quantities of coal stocks were sighted along the storage sites in Wapung, Mookhep, 1kilo, 4 kilo and Sutnga road of East Jaintia Hills District. The top layers were observed to be fresh and dark in color. Several trucks were also sighted unloading **(refer photo file no. 8 and video file nos. 4 & 5)** coal at the storage sites.”*

It is needless to point out that this is in utter disregard and violation of the orders of the Tribunal. A specific case of violation by the private party has also been brought to our notice. Even the weigh bridges have not been installed and made operative in the State in regard to which various mine owners have raised specific grievances and filed applications before us.

Normally for such gross violations and incapability of the State to execute and comply with our orders, we would have banned even the transportation of the coal in the entire state. However, keeping in view the fact that storage of coal itself is likely to cause serious environmental degradation and pollute the ground water and water bodies which are already exceeding the prescribed parameters and keeping in mind the principle of Sustainable Development and Principle of Polluter Pays contemplated under Section 20 of the NGT Act and the economic growth of the state, we would permit transportation of the coal subject to and in compliance with the conditions stated hereinafter. At this stage we

direct as follows:

- (a) We direct the Director General of Police, Chief Secretary, concerned Secretary of the State Government, all the district Magistrate, SPs of the respective districts to ensure the enforcement of the orders of the Tribunal in regard to complete prohibition of illegal, unscientific and unregulated rat hole mining in the State of Meghalaya without delay and default.

If any case of violation is brought to our notice henceforth, we will be compelled to take action against these officers personally in accordance with law including directing them to pay compensation for degradation of the environment and ecology of the area falling under their jurisdiction.

- (b) The State of Meghalaya shall prepare the mining map, policy and guidelines within six weeks from today and is free to take assistance of the committee constituted by the Tribunal.
- (c) Transportation of the coal shall be permitted strictly in accordance with the guidelines prepared by the committee, orders of the Tribunal and all environmental protection measures for carriage of such coal.

All the 12 weigh bridges shall be made operative within four weeks from today. We are informed that vide its notification dated 24<sup>th</sup> March, 2015 the weigh bridge at Mandi Hati, East Jaintia Hills District has become operative. It is suggested on behalf of the State that the weigh bridge at Dhalu, which is not operative, is near to

another exit point at Gasuapara and can meet the need of the transportation at the point of Dhalu. We do not accept this contention. A separate independent weigh bridge shall be provided at Dhalu.

It is further pointed out that at Garam Pani, the Government had invited tenders for manning and installing weigh bridge, but none has responded. We again see this as no ground for the Government not to be proactive and install and manage the weigh bridges itself at Garam Pani. Let this now be done positively within four weeks from today. In other words, all the 12 independent weigh bridges shall be made operative within four weeks from today without default and exception, whatever be the reason.

As far as transportation of coal is concerned, various applicants have come up before the Tribunal on the ground that they had paid the royalty but could not transport because of non-availability of weigh bridges and for such other allied reasons. According to them, they have missed an opportunity for carrying on their business which they are entitled to and were even permitted under the orders of the Tribunal. In view of this, we direct as follows:

- (1) All, whether before the Tribunal or not, persons, owners of the mines and or in any way interested thereto in accordance with law can pay the royalty for carriage of already extracted coal within 3 weeks from today;
- (2) Thereafter, the State would not accept any royalty without specific orders of the Tribunal.

(3) Within six weeks or by 31<sup>st</sup> May, 2015 whichever is earlier, the extracted coal for which the royalty had already been paid can be permitted to be transported by the State of Meghalaya strictly in accordance with the guidelines laid down by the committee, approved by the Tribunal and the orders of the Tribunal passed from time to time.

(4) All the weigh bridges shall maintain due computerized record of all the coal that is permitted to be transported from any of the 12 approved points in the State of Meghalaya. The computerized record shall be maintained and would be subject to inspection by the committee constituted by the Tribunal.

We may also notice that the Hon'ble Supreme Court of India vide its order dated 22.05.2012 had directed that the State Government should continue to issue weighbridge certificate and maintain the weighbridges properly. Even in view of this order, the State must maintain weighbridges as per law.

(5) As already noticed earlier, huge extracted coal is lying in open and the same shall be permitted by the Government for transportation strictly in terms of these orders. The royalty collected by the State would be maintained under separate heads.

It is also undisputable that there has been huge environmental degradation and pollution of the waterbody in the State of Meghalaya, because of this illegal, unscientific mining. No one has even thought of restoration of the area in question, to bring to some

extent, if not completely, restoration of ecology and environment in question. Serious steps are required to be taken for cleaning polluted waterbodies and ensure that no further pollution is caused by this activity and the activity which would be permitted to be carried on finally including transportation of coal. On the basis of 'Polluter Pay Principle'. We direct that the State Government shall in addition to the royalty payable to it, shall also collect 10% on the market value of the coal for every consignment. Having heard the learned Counsel appearing for the parties and keeping in view the notifications of the Central Government dated 10.05.2012 and that of the State Government dated 22.06.2012, we may notice that in the report of Comptroller and Auditor General of India for the period ending 31<sup>st</sup> March, 2013 under 7.5.18 of Chapter 7 of which the invoice value of the coal has been taken Rs. 4850/- per metric tonne.

Thus, we direct that the State Government shall in addition to the royalty payable to it, also collect 10% of the said market value of the coal per metric tonne from each person. The amount so collected shall be deposited in the account to be titled as 'Meghalaya Environment Protection and Restoration Fund' to be maintained by the State under the direct control of the Chief Secretary of the State of Meghalaya.

This amount shall only be used for restoration of environment and for necessary remedial and preventive measures in regard to environment and matters related thereto.

We make it clear that this 10% of the additional

amount shall be payable by all persons who had transported the coal in the past or would transport in future, without exception. Such persons would be given fresh permission to transport extracted coal, only after they pay additional amount of 10% as directed under this order. We also direct the committee constituted under this order to place before the Tribunal any suggestion in regard to preventive steps that are required to be taken in respect of the coal, which has remained un-transported at the sites, to prevent pollution and ensure that no further degradation of environment occurs in that area within 6 weeks from today.

Vide our order dated 29<sup>th</sup> January, 2015 we had appointed commissioners to inspect the mining site in question and the places where coal had been stored. Keeping in view the load, nature of the work and other attendant circumstances, we appoint additional local Commissioners to visit the sites in question. The entire team of Commissioners appointed by the Tribunal is as follows:

1. Mr. J.P. Kharbhi, Adv.
2. Ms. Rosana Lyngdoh, Environmentalist
3. Mr. Vijay Pradhan, Environmentalist
4. Mr. Katdoh Rymbui, Retired SP
5. Mr. N. Bhattacharjee, Environmentalist
6. Mr. Daleep Kumar Dhyani, Adv.
7. Mr. Ajit Sharma, Adv.
8. Mr. Rajul Shrivastava, Adv
9. Mr. Narinder Pal Singh, Adv.
10. Mr. Karan Veer Khehar, Adv.
11. Mr. Karan Singh Chandhiok, Adv.
12. Mr. Tanmaya Mehta, Adv.

The above said Commissioners in pair of two each would visit the mining sites where the coal is stored, weighbridges sites, the trucks carrying coal and inspect all other matters directly or incidentally covered under the order of Tribunal. All the expenses of the Commissioners' including travelling, fee and other expenses shall be borne at the first instance by the State of Meghalaya and would be subject to further orders of the Tribunal. We make it clear that mine owners and mine workers, transporters who are found in the default would be liable to pay this amount and reimburse the State Government finally. The fee of the Commissioners, who had already been appointed, and belong to the State of Meghalaya, shall be Rs. 20,000/- per trip. While the advocates appointed from Delhi, who will have to go to the State of Meghalaya, shall be paid a sum of Rs. 35,000/- per trip. The inspection team consisting of two commissioners would submit their report directly to the Principal Bench of NGT in sealed cover.

We direct the administration and police authority to provide full protection and facility to the Commissioners who are going to visit the site in future.

Payment of royalty shall be permitted through RTGS as ordered earlier.

In terms of the challans of deposit of royalty, which had been issued by the State Government from time to time before the expiry of the time period granted, transportation can be permitted for a period of 6 weeks from today, however, upon payment of compensation of additional 10% of the value of the coal as aforesated.

All the persons including mine owners would be permitted to deposit royalty along with compensation as per Letter of Credit aslo.

For clarification, date for payment of royalty and compensation would be 3 weeks i.e. 21 days w.e.f. 25<sup>th</sup> March, 2015, both first and last day inclusive.

**General Directions**

We hereby direct that in the 308 cases which have already been registered by the State Government as the cases of illegal mining or transportation and in those cases, which may come to the notice of the State in future, the miners, whose agents, carriers/transporters or any other person are indicted therein shall be liable to pay three times the royalty amount to the State government. In other words, if the royalty on carriage is taken to be Rs. 675/- per MT then it would be Rs. 675x3= Rs. 2025 viz. Rs. 2025/- amount as royalty charged and the excess charged, shall be kept under the 'Meghalaya Environment Protection and Restoration Fund' to be utilized for restoration of environment.

Now we will revert to violation of the orders of the NGT on account of illegal mining and unauthorized transportation of coal carried out by the private individuals.

The Learned Local Commissioners have been appointed in different cases. However, for the present we would only confine ourselves to the case of Mr. Sarki Phawa. From the relevant abstract of the Local Commissioners report, which we have already reproduced, it has been specifically noticed that the Local

Commissioners found fresh coal being transported in the trucks and being stored at different sites. The commissioners have filed videography as well as photographs on record. From the photographs before us, it is clear that colour of the fresh coal is different from the other stored coal which certainly means that it was freshly extracted coal. Furthermore Mr. Sarki Phawa has not paid any royalty for transportation of coal. The truck also shows that no protection measures were taken for transportation of extracted coal in an eco-friendly manner. In fact, it is in flagrant violation of the commonly known environmental protection measures for carriage of coal. Unscientifically transportation of coal is bound to cause environmental pollution as the dust falls in the waterbodies near the passage through which such vehicles travel.

The Learned Counsel appearing for Mr. Sarki Phawa contended that photographs do not show any extraction of fresh coal. According to him, Mr. Sarki Phawa had carried coal from Chamcham to Kongyong Village which is 12 kms away and near to the National Highway No. 44. The Learned Counsel submitted that despite this, his client tenders unconditional apology.

Having perused report of the Local Commissioners and having heard the counsel appearing for Mr. Sarki Phawa, we find that there has been intentional violation of the directions of the Tribunal by him. Furthermore, he has polluted the environment and still he obviously brought the coal near to National Highway from where it could be taken to any other final destination. We find that

there is complete lack of bonafide on the part of Mr. Sarki Phawa who ought not to have violated orders of the Tribunal and carried on illegal mining at the risk of the life of the others and environment in terms of the public health and contamination of nature. We hold no sympathy and find that the apology has been tendered in order to primarily divert the attention of the Tribunal from the realm of violation to the field of sympathy. Resultantly we direct that Mr. Sarki Phawa will be liable to pay a sum of Rs. 5 Lakhs as compensation in terms of Section 15 of the NGT Act read with Section 20 of the Act. Till the time this amount is paid, the entire coal extracted and lying in his village Chamcham and Kongyong Village shall be seized and will be available for disposal subject to the orders of the Tribunal.

As regards the remaining defaulters we would take up the case subsequently.

List this matter on 16<sup>th</sup> April, 2015 at Shillong as the date already fixed.

.....,CP  
(Swatanter Kumar)

.....,JM  
(U.D. Salvi)

.....,EM  
(Dr. D.K. Agrawal)

.....,EM  
(Prof. A.R. Yousuf)

.....,EM  
(B.S. Sajwan)

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI****Original Application No. 110(T<sub>HC</sub>)/2012****And****Original Application No. 73/2014****(M.A. No. 655/2016, M.A. No. 963/2016, M.A. No. 1051/2016, M.A. No. 285/2017, M.A. No. 961/2017, M.A. No. 1010/2017, M.A. No. 536/2018, M.A. No. 537/2018, M.A. No. 549/2018, M.A. No. 550/2018, M.A. No. 551/2018, M.A. No. 552/2018, M.A. No. 589/2018, M.A. No. 638/2018, M.A. No. 695/2018, M.A. No. 738/2018, M.A. No. 790/2018, M.A. No. 1006/2018, M.A. No. 1007/2018, M.A. No. 1008/2018 & M.A. No. 1214/2018)****And****Original Application No. 13/2014****And****Original Application No.186/2014****And****Original Application No. 287/2017****IN THE MATTERS OF:****Threat to Life Arising Out of Coal Mining in South Garo Hills District****Vs.****State of Meghalaya &Ors.****And****All Dimasa Students Union Dima Hasao Dist. Committee****Vs.****State of Meghalaya &Ors.****And****Impulse NGO Network Vs. State of Meghalaya &Ors.****And****Thomas Nongtdu & Anr.Vs. State of Meghalaya &Ors.****And****R.K. Momin Vs. State of Meghalaya &Ors.****CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON  
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER  
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER****Original Application No. 110(T<sub>HC</sub>)/2012:****Present: Amicus Curie: Mr. Raj Panjwani, Sr. Adv, Mr. Aagney Sail, Adv.  
Respondent No. 2: Mr. B. V. Niren and Mr. K. Mudgal, Adv.  
MoEF&CC: Mr. Rahul Pratap, Adv.  
Meghalaya State PCB: Mr. Tayenjam Momo Singh, Adv.  
State of Meghalaya: Mr. Ranjan Mukherjee, Ms. Aprajita Mukherjee and Mr. Daniel Stone Lyngdon, Adv.  
CGSC: Mr. Ardhendumauli Kr. Prasad, Adv. and Mr. Shashank Saxena, Adv.  
Respondent nos. 4 & 5: Mr. P. Yobin and Mr. Saurabh Sharma, Adv.  
Mr. Shuvodeep Roy and Mr. Vinayak Gupta, Adv. for State of Assam****Original Application No. 73/2014:****Present: Amicus Curie: Mr. Raj Panjwani, Sr. Adv, Mr. Aagney Sail, Adv.  
MoEF&CC: Mr. Rahul Pratap, Adv.  
Meghalaya State PCB: Mr. Tayenjam Momo Singh, Adv.  
State of Meghalaya: Mr. Ranjan Mukherjee, Ms. Aprajita Mukherjee and Mr. Daniel Stone Lyngdon, Adv.  
Mr. Raka Bijoy Phookan, Mr. Neha Tandon, Adv. in M.A. Nos. 1006/2018 to 1008/2018  
CGSC: Mr. Ardhendumauli Kr. Prasad, Adv. and Mr. Shashank Saxena, Adv.  
Mr. Mayank, Adv.  
Mr. H. S. Thangkhiew, Sr. Adv., Mr. Philemn Nongbri and Mr. A. Rohen Singh, Adv.  
Mr. Shuvodeep Roy and Mr. Vinayak Gupta, Adv. for State of Assam**

**Original Application No. 13/2014:**

**Present:** Amicus Curie:  
Meghalaya State PCB:  
State of Meghalaya:  
  
CGSC:

Mr. Raj Panjwani, Sr. Adv, Mr. Aagney Sail, Adv.  
Mr. Tayenjam Momo Singh, Adv.  
Mr. Ranjan Mukherjee, Ms. Aprajita Mukherjee  
and Mr. Daniel Stone Lyngdon, Adv.  
Mr. Ardhendumauli Kr. Prasad, Adv. and Mr.  
Shashank Saxena, Adv.

**Original Application No.186/2014:**

**Present:** Applicant:  
Meghalaya State PCB:  
State of Meghalaya:  
  
CGSC:

Mr. Tayenjam Momo Singh, Adv.  
Mr. Ranjan Mukherjee, Ms. Aprajita Mukherjee  
and Mr. Daniel Stone Lyngdon, Adv.  
Mr. Ardhendumauli Kr. Prasad, Adv. and Mr.  
Shashank Saxena, Adv.

**Original Application No. 287/2017:**

**Present:** Applicant:  
  
MoEF&CC:  
Meghalaya State PCB:  
State of Meghalaya:  
  
CGSC:

Mr. Yashpal Rangi, Adv. along with Mr. Hariom,  
Adv.  
Mr. Rahul Pratap, Adv.  
Mr. Tayenjam Momo Singh, Adv.  
Mr. Ranjan Mukherjee, Ms. Aprajita Mukherjee  
and Mr. Daniel Stone Lyngdon, Adv.  
Mr. Ardhendumauli Kr. Prasad, Adv. and Mr.  
Shashank Saxena, Adv.

Date and Remarks	Orders of the Tribunal
<p>Item Nos. 06 to 10</p> <p>August 31, 2018</p> <p>R</p>	<p>1. The proceedings in these matters were initiated initially before the then Bench of Guwahati High Court at Shillong on the basis of news item reports to the effect that on 06.07.2012, 30 coal labourers were trapped inside a coal mine at Nongalbibra in the District of South Garo Hill and 15 of them died inside the coal mine. According to the news item, the incident happened on account of lack of safety norms. Vide order dated 10.12.2012 in <i>PIL (Suo Moto) Number (SH) 3 of 2012</i>, the matter was directed to be transferred to this Tribunal.</p> <p>2. The Tribunal issued notice to the parties on 30.01.2013 and has been, thereafter, dealing with the matter since the last five years.</p> <p>3. It will be appropriate if reference is made to some of the orders passed.</p> <p>4. On 17.04.2014, the Tribunal looked into the validity of the rat-hole mining operation in the light of the scientific studies and by way of interim direction, directed as follows:</p>

<p><b>Item Nos. 06 to 10</b></p> <p><b>August 31, 2018</b></p> <p><b>R</b></p>	<p><i>“Accordingly, while admitting the application, we direct the Chief Secretary, Government of Meghalaya and the Director General of Police, State of Meghalaya to ensure that rat-hole mining/illegal mining is stopped forthwith throughout the state of Meghalaya and any illegal transport of coal shall not take place until further orders passed by this Tribunal. The Director General of Police, State of Meghalaya is also directed to report to this Tribunal about the compliance of the order by the next date of hearing.”</i></p> <p>5. After the above order was passed, the question was as to what should happen to the already extracted material. The Tribunal, vide order dated 09.06.2014, permitted transportation of already extracted material lying in open near the sites, subject to the supervision and directions of the Committee comprising of Director of Mines, Meghalaya and other officers as per the said order. The Committee was required to quantify the extracted coal and its location and also to assess its value. The Committee was also to prescribe the mode of transportation. The Committee was to fix two check-points <i>en route</i> transportation of the extracted coal from the point of loading to the point of destination. The issue of restoration of damage to the area affected by illegal mining was taken up for consideration on 01.08.2014 and the earlier constituted Committee was substituted to ascertain quantum of extracted coal and to carry out other functions.</p> <p>6. On 07.10.2014, the Tribunal considered the reports of the Committee and directed that check-posts be established apart from setting up of royalty collection counters. It was noted that 6.3 million tonnes of coal of the value of Rs. 3078 crores was lying in the State and the royalty assessed was Rs. 400 crores. The Tribunal</p>
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	<p><b>Item Nos. 06 to 10</b></p> <p><b>August 31, 2018</b></p> <p><b>R</b></p>	<p>also directed making of a mining plan for scientific mining. Direction was also issued on 26.11.2014 to videograph the operations of the weigh bridges. Since there were disputes about the quantum of coal which could be permitted to be transported, the said issue was directed to be gone into with the assistance of the Committee on several occasions.</p> <p>7. On 25.03.2015, it was noted that the State has failed to check illegal mining and the violations. There were no proper guidelines to check such illegal mining. Joint reports of the inspection supported the factum of illegal mining. It was also noted that as per Report of Comptroller and Auditor General of India for the period ending 31<sup>st</sup> March, 2013 under 07.5.18 of Chapter 7, the invoice value of the coal was taken at Rs. 4850/- per metric tonne. 'Meghalaya Environment Protection and Restoration Fund' (MEPRF) was directed to be constituted to credit an amount of royalty in excess of Rs. 1260 per metric tonne to which the amount of penalty recovered from illegal miner at three time the current royalty rate that is @ Rs. 2025/- was to be credited. This was applicable to 308 cases, registered by the State Government. We are informed that a sum of about Rs. 410 crores up to 31.05.2018 has been credited to this account and deposited in a separate account. There was also a direction on 30.03.2015 that the State Government will collect 10% of the market value of coal per metric tonne in addition to the royalty and the said amount was also be credited to the Meghalaya Environment Protection and Restoration Fund.</p>
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<p><b>Item Nos. 6to 10</b></p> <p><b>August 31, 2018</b></p> <p><b>R</b></p>	<p>8. On 31.03.2016, the Tribunal directed that except for the coal already transported prior to 2016, the remaining coal shall vest in the State and disposed of in accordance with law and consistent with the norms of environment. The State was to place a plan as to how the coal vested in the State will be dealt with (Order dated 10.05.2016). On 02.01.2018, Restoration Plan filed before this Tribunal on 03.10.2017 by the Ministry of Environment, Forest and Climate Change was noted for consideration.</p> <p>9. On 18.01.2018, there was again issue on un-assessed coal lying at some places.</p> <p>10. At this stage, we may note that following issues are pending before the Hon'ble Supreme Court arising out of orders passed by this Tribunal:</p> <p>i) <i>Civil Appeal No(s). 5272/2016</i> titled as <i>Ka Hima Nongstoin Land Owners, Coal Traders and Producers Association Vs. All Dimasa Students Union, Dima Hasao District Committee and Ors.</i> wherein following order was passed on 21.09.2016:</p> <p><i>"Having heard counsel for the parties, it is directed that the petitioners, as well as the respondents, who have mined the coal, are permitted to transport the coal on payment of royalty and other fees as fixed by the National Green Tribunal (for short, 'the Tribunal') and other relevant status. The extracted coal can be transported from 1<sup>st</sup> October, 2016 till 31<sup>st</sup> May, 2017. It is further directed that no other extraction shall take place in the meantime.</i></p> <p><i>The finding of the Tribunal that the coal is vested in the State on the ground that it is illegally extracted coal, shall be adverted to at the time of final hearing. The miners shall keep the accounts and if, ultimately, it is held that the coal belongs to the State, they will refund the amount with interest. The quantum of interest shall be determined at the time of final hearing. Needless to say, these observations have been made</i></p>
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<p><b>Item Nos. 06 to 10</b></p> <p><b>August 31, 2018</b></p> <p><b>R</b></p>	<p><i>without prejudice to the contentions to be raised by the learned counsel for the parties. The tribunal can proceed with regard to the other aspects which are pending before it.”</i></p> <p>The above order shows that question whether coal is vested in the State is to be gone into before the Hon’ble Supreme Court.</p> <p>Thereafter, on 28.03.2018, by the said order, time for transporting already extracted coal was extended up to 31.05.2018 but it was clear that no further extraction shall be allowed.</p> <p>ii) <i>Civil Appeal Diary No. 3067/2018</i> titled as <i>Lber Laloo Vs. All Dimasa Students Union, Dima Hasao District Committee and Ors.</i>, raising the question whether ban on mining can be continued. We are informed that in the said matter, the issue of mining plan has also been raised.</p> <p>11. We have heard learned counsels for the parties present before this Tribunal today.</p> <p>12. Mr. Raj Panjwani, Senior Advocate, appearing as Amicus Curiae has suggested that in view of the orders already passed from time to time, the issue of banning rat-hole mining can be taken as final as far as this Tribunal is concerned, subject to any orders which may be passed in pending proceedings before the Hon’ble Supreme Court. The issue of rehabilitation of the affected victims and the affected areas can be finalized by issuing an appropriate direction. Irrespective of ownership of the already mined coal, a direction can be issued for appointment of a receiver/custodian as no further transportation is permissible after 31.05.2018 in view of</p>
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<p><b>Item Nos. 06 to 10</b></p> <p><b>August 31, 2018</b></p> <p><b>R</b></p>	<p>orders of the Hon'ble Supreme Court. This can be subjected to further orders of the Hon'ble Supreme Court.</p> <p>We do not find any reason why this suggestion be not accepted.</p> <p>13. Accordingly, we direct that orders of ban of rat-hole mining will continue, subject to further orders of the Hon'ble Supreme Court. Ban of transportation of the already mined material will also continue subject to further orders of the Hon'ble Supreme Court. The State of Meghalaya will be the receiver/custodian of the available extracted coal as on date, subject to further orders of the Hon'ble Supreme Court. If any further coal not so far recorded in the inventory is available, a separate inventory may be made and if it is found that the extraction was illegal, royalty in terms of orders already passed may also be collected. This may be determined by the Secretary of Mining of the State of Meghalaya. While one view is that there is extracted coal and not accounted for, the other view put forward that it is result of illegal mining. This aspect may be gone into by the Secretary of Mining, State of Meghalaya in the first instance. The same be cross-checked by a joint team of representatives of Central Pollution Control Board and Indian School of Mines, Dhanbad.</p> <p>14. Only last question which remains is of restoration of the environment and rehabilitation of the victims for which funds are available. We are of the view that for this task, it will appropriate that we constitute an independent Committee. This Committee will be headed by Justice B.P. Katoki, Former Judge of the Guwahati</p>
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<p><b>Item Nos. 06 to 10</b></p> <p><b>August 31, 2018</b></p> <p><b>R</b></p>	<p>High Court with representatives from Central Pollution Control Board and Indian School of Mines, Dhanbad.</p> <p>15. The Committee will take the following steps:</p> <ul style="list-style-type: none"> <li>• Take stock of all actions taken so far in this regard.</li> <li>• Prepare time bound action plan to deal with the issue and ensure its implementation.</li> </ul> <p>16. The Committee may requisition services of such technical experts as may be necessary and may also carry out visits to sites whenever necessary. They will be entitled to all logistic support for performing these functions which shall be provided under the directions of the Chief Secretary, Meghalaya.</p> <p>17. The Committee may also set up website for receiving and giving information on subject.</p> <p>18. The Committee may also involve educational institutions for awareness and feedback about results.</p> <p>19. All authorities concerned in the State of Meghalaya shall cooperate and coordinate with the Committee. The Committee can seek such technical assistance as may be required from any relevant authority.</p> <p>20. The Chief Secretary, Meghalaya to provide all facilities to said Committee to perform its functions. The Committee may send its periodical reports to the Tribunal by e-mail at <a href="mailto:filing.ngt@gmail.com">filing.ngt@gmail.com</a>.</p> <p>21. The Committee may assume its charge within two weeks from today. The Committee may prepare Action Plan which shall have targets of ensuring compliance. It may meet at such intervals as considered appropriate but twice in every month and fix targets for compliance.</p> <p>22. The Committee will be free to take up all incidental</p>
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<p><b>Item Nos. 06 to 10</b></p> <p><b>August 31, 2018</b></p> <p><b>R</b></p>	<p>issues. The Committee will be free to seek any further directions from this Tribunal by e-mail.</p> <p>23. The Chief Secretary of State of Meghalaya may determine remuneration of the Chairman in consultation with him and the Chief Secretary of the State of Meghalaya will also provide all logistic support including security if needed for their proper functioning.</p> <p>25. The Committee will be entitled to take the help of the technical experts in execution of this order. The Committee may frame its action plan for implementation within one month from today and implementation may be completed within six months as far as possible. The timelines may be laid down. A copy of the action plan may be sent to this Tribunal by e-mail at <a href="mailto:filing.ngt@gmail.com">filing.ngt@gmail.com</a>. Thereafter, reports may be sent at least once in two months. The Committee may also assess the damage to the environment as well as to the individuals as already suggested in the Report.</p> <p>27. The State of Meghalaya will make available all the relevant records to the Committee for the purpose. The State will also determine the remuneration to be paid to the Chairman of the Committee in consultation with him within one month from today.</p> <p>28. The Committee will be at liberty to take technical assistance from any quarter which may be facilitated by the State of Meghalaya. The Committee may also supervise any issue arising out of receivership/custodianship of the already extracted coal, including any environmental issues which any arise out of storage of the extracted material and the steps required</p>
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<p><b>Item Nos. 06 to 10</b></p> <p><b>August 31, 2018</b></p> <p><b>R</b></p>	<p>to be taken for the purpose.</p> <p>The Report of the Committee may be furnished to this Tribunal by e-mail at <a href="mailto:filing.ngt@gmail.com">filing.ngt@gmail.com</a>.</p> <p>A copy of this order may be sent to all the concerned authorities by e-mail for compliance.</p> <p>All pending matters will stand disposed of in above terms.</p> <p>List for consideration of the Report on 06<sup>th</sup> March, 2019.</p> <p>.....,CP (Adarsh Kumar Goel)</p> <p>.....,JM (Dr.Jawad Rahim)</p> <p>.....,JM (S.P. Wangdi)</p> <p>.....,EM (Dr.Nagin Nanda)</p> <p>31.08.2018</p>
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## ANNEXURE R-7

STATE OF MEGHALAYA v. ALL DIMASA  
STUDENTS UNION

177

### (2019) 8 Supreme Court Cases 177

- a* (BEFORE ASHOK BHUSHAN AND K.M. JOSEPH, JJ.)  
Civil Appeal No. 10720 of 2018<sup>†</sup>  
STATE OF MEGHALAYA .. Appellant;  
*Versus*  
ALL DIMASA STUDENTS UNION, DIMA-HASAO  
*b* DISTRICT COMMITTEE AND OTHERS .. Respondents.  
*With*  
Civil Appeal No. 10611 of 2018  
STATE COORDINATION COMMITTEE OF COAL  
OWNERS, MINERS AND DEALERS FORUM .. Appellant;  
*Versus*  
*c* ALL DIMASA STUDENTS UNION, DIMA HASAO  
DISTRICT COMMITTEE AND OTHERS .. Respondents.  
*With*  
Civil Appeal No. 10907 of 2018  
GARO HILLS AUTONOMOUS DISTRICT COUNCIL .. Appellant;  
*d* *Versus*  
ALL DIMASA STUDENTS UNION, DIMA HASAO  
DISTRICT COMMITTEE AND OTHERS .. Respondents.  
*With*  
Civil Appeal No. 5272 of 2016<sup>‡</sup>  
*e* KA HIMA NONGSTOIN LAND OWNERS, COAL  
TRADERS AND PRODUCERS ASSOCIATION .. Appellant;  
*Versus*  
ALL DIMASA STUDENTS UNION, DIMA HASAO  
DISTRICT COMMITTEE AND OTHERS .. Respondents.  
*With*  
*f* Civil Appeal No. ... of 2019<sup>††</sup>  
LBER LALOO .. Appellant;  
*Versus*  
ALL DIMASA STUDENTS UNION, HASAO DISTRICT  
COMMITTEE AND OTHERS .. Respondents.  
*g*

<sup>†</sup> Arising from the Judgment and Order in *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241 (National Green Tribunal, Original Application No. 110 of 2012, dt. 31-8-2018)

<sup>‡</sup> Arising from the Judgment and Order in *All Dimasa Students Union v. State of Meghalaya*, 2016 SCC OnLine NGT 174 (National Green Tribunal, Original Application No. 73 of 2014, dt. 10-5-2016)

*h* <sup>††</sup> Arising out of CA Diary No. 3067 of 2018. Arising from the Judgment and Order in *All Dimasa Students Union v. State of Meghalaya*, 2015 SCC OnLine NGT 697 (National Green Tribunal, MA No. 92 of 2015 in Original Application No. 73 of 2014, dt. 25-3-2015)

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SUPREME COURT CASES

(2019) 8 SCC

*With*

Civil Appeal No. 2968 of 2019<sup>†‡</sup>

STATE OF MEGHALAYA

.. Appellant;

a

*Versus*

ALL DIMASA STUDENTS UNION, DIMA HASAO  
DISTRICT COMMITTEE AND OTHERS

.. Respondents.

Civil Appeals No. 10720 of 2018 with Nos. 10611, 10907 of 2018,  
5272 of 2016, ... of 2019 and 2968 of 2019, decided on July 3, 2019

b

**A. Constitution of India — Art. 244(2) r/w Sch. VI Para 12-A(b) and Sch. VII List II Entry 23 and List I Entry 54 — Autonomous district or region in State of Meghalaya — Privately owned/community owned land in Hills Districts — Nature of rights, including subsoil/mineral rights, of such private owners/community, applicable law and approval procedure for mining/grant of mining leases in respect of such land**

— Held, (a) private owners/community of such land have both surface right as well as subsoil rights, that is, right over minerals, (b) and therefore, NGT was not correct in declaring that all extracted coal lying in open after 15-5-2016, that is, after lapse of interim order, would vest with State of Meghalaya, (c) both MMDR Act and Rules are applicable to such private community lands and mining lease contemplated under MMDR Act is mandatory without which no mining operations can be conducted even in these private lands, (d) if scientific mining is carried on under regulated conditions as per law, ban order of NGT would not operate against such mining and said ban order applies only to illegal coal mining which was rampant, (e) in view of S. 2, MMDR Act, Central Government has power of control, regulation and development of minerals and District Council or Regional Council cannot make any law which is repugnant to law made by Parliament, and (f) State of Meghalaya has ample power to ensure compliance with statutory scheme

c

d

e

— Application of MMDR Act and Rules has not been barred/regulated by any Presidential Notification under Sch. VI Para 12-A(b) — There is nothing in S. 4(1), MMDR Act to indicate that restriction contained therein does not apply to privately owned/community owned land — Statutory scheme delineated by S. 13(2)(f), MMDR Act and Mineral Concession Rules, 1960 clearly contemplates grant of mining lease with regard to both categories of land: land in which minerals vest in Government and land in which minerals vest in person(s) other than Government

f

— It cannot be said that no mining lease is contemplated in respect of land where mineral vests exclusively with private persons — Words “mining lease” specified in MMDR Act have to be interpreted in a manner which will advance object of legislation — Essential characteristics of mining lease, under MMDR Act are that it is granted for purpose of undertaking “mining operations”; and “mining operations” means any operation undertaken for purpose of winning mineral

g

<sup>†‡</sup> Arising from the Judgment and Order in *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2019 SCC OnLine NGT 105 (National Green Tribunal, Original Application No. 110 of 2012, dt. 4-1-2019)

h

STATE OF MEGHALAYA v. ALL DIMASA  
STUDENTS UNION

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a — Therefore, for coal mining in said Hills Districts of State of Meghalaya, it is private owner/community owner of land who is also owner of mineral, who shall grant lease for mining of coal as per provisions of Ch. V, Mineral Concession Rules, 1960 after obtaining previous approval of Central Government through State Government — If mining is done after proper approval of mining plans, ban order of Tribunal dt. 17-4-2014 shall not operate against such mines — State of Meghalaya, which has ample power to implement statutory scheme, has to ensure compliance with MMDR Act, b 1957, Mines Act, 1952 as well as Environment (Protection) Act, 1986 and all other applicable laws, including all environmental laws — However, power to legislate with regard to mines and minerals throughout India is vested with Central Government in view of declaration in public interest under S. 2, MMDR Act that Union has taken under its control, regulation and development of mineral — District Council or Regional Council cannot make any law which c is repugnant to law made by Parliament

— Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 4, 5, 13 and 2 — Mineral Concession Rules, 1960 — Ch. V — Transfer of Property Act, 1882 — Ss. 3 and 105 — Subsoil rights/mineral rights in privately owned/community owned land — Exploitation d of — Held, has to be in compliance with scheme of MMDR Act/Mineral Concession Rules and all applicable environmental laws — Mines Act, 1952 — Ss. 5, 75 and 57 — Powers of Magistrate — Scope of — Restrictions that may be placed upon — Coal Mines Regulations, 2017, Chs. II and IV (Paras 195.4 to 195.13, 74 to 154 and 183 to 186)

e **B. Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 4, 5, 3(c) & (d) and 13 — Exploitation of mineral wealth by owner of land himself — Mandatory necessity of compliance with MMDR Act and Mineral Concession Rules and Environmental Laws — “Mining lease” under MMDR Act vis-à-vis “lease” under TPA — Compared**

f — Held, even where land is privately owned and thus private owner owns subsoil/mineral rights therein, even then such owner has to comply with requirements of MMDR Act and Mineral Concession Rules and Environmental Laws, to exploit the subsoil/mineral rights — Property Law — Transfer of Property Act, 1882 — Ss. 3 and 105 — Words and Phrases — “Mining lease”, “lease” — Mineral Concession Rules, 1960, Ch. V

g **C. Constitution of India — Art. 244(2) r/w Sch. VI Para 12-A(b) and Sch. VII List II Entry 23, List I Entry 54 and Pt. X — Autonomous district or region in State of Meghalaya — Lands in Hills Districts of Meghalaya — Land revenue system during colonial times and present day and different types of lands in Khasi Hills and Jaintia Hills, discussed**

h — Concluded, that, most of the lands in said Hills Districts are either privately or community owned in which State does not claim any right — Tribals owned the land as well as subsoil and mineral rights therein, which is an inescapable conclusion — Tenancy and Land Laws — Mineral/Subsoil rights (Paras 74 to 93)

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SUPREME COURT CASES

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**D. Constitution of India — Art. 244(2) r/w Sch. VI Para 12-A(b) and Sch. VII List II Entry 23 and List I Entry 54 — Autonomous district or region in State of Meghalaya — Privately owned/community owned land in Hills Districts — Unscientific and unregulated mining — Reversal of incorrect decision of Tribunal by which Tribunal had vested all extracted coal lying in open as on 15-5-2016 with State of Meghalaya — Proper disposal of such coal — Directions issued**

— On suggestion of Amicus Curiae, entire extracted coal as mentioned above directed to be handed over to Coal India Ltd., for proper disposal by way of auction — State Government directed to bear transportation expenses which could be deducted from price of coal received in auction — Thus proceeds of auction to be paid back to the private owners/community owners after deducting: (a) transportation expenses, (b) royalty, (c) taxes payable, and (d) payment towards MEPR Fund

— But clarified that above order would not be applicable to coal seized due to illegal transportation and illegal mining — These have to be dealt with in accordance with S. 21, MMDR Act — Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957, S. 21 (Paras 195.20 to 195.25, 196 and 149 to 154)

**E. Constitution of India — Art. 244(2) r/w Sch. VI Para 12-A(b) and Sch. VII List II Entry 23, List I Entry 54 — Autonomous district or region in State of Meghalaya — Privately owned/community owned land in Hills Districts — Environmental degradation resulting from coal mining — Restoration of environment — Liability of State Government**

— Tribunal directing State Government to pay Rs 100 crores to Central Pollution Control Board, held, neither can be regarded as a penalty nor a fine — Modification of Tribunal's order — Tribunal's order modified to extent that said amount shall be paid to Central Pollution Control Board from MEPR Fund, and aforesaid amount should be utilised only for restoration of environment in State of Meghalaya — Mines and Minerals — Mines and Minerals (Development and Regulation) Act, 1957 — S. 21 — Environment Law — General Principles of Environmental Law — Polluter Pays Principle and Remedial/Compensatory/Punitive Measures — Remedial action/Reclamation/Rehabilitation measures/Compensation/Disgorgement of gains of wrongdoer (Paras 195.19 and 196, 172, 182 and 187 to 194)

**F. Environment Law — National Green Tribunal Act, 2010 — Ss. 14 to 16, 19(1) and Sch. I — Illegal, unscientific and unregulated coal mining — Environmental degradation of water, air and surface — Jurisdiction and extensive powers of NGT — Wider jurisdiction of NGT under S. 19 of 2010 Act vis-à-vis power of court under Or. 26 R. 10-A CPC — Wide discretion conferred upon NGT by enabling provision of R. 24 of 2011 Rules — Explained**

— NGT, held, did not exceed its jurisdiction under Ss. 14(1)(i) & (ii) and S. 15 of NGT Act, 2010 in entertaining original applications as well as matters transferred from High Court and issuing appropriate directions — Expert reports proved that there was environmental degradation of water,

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**a** **air and surface — Tribunal also did not exceed its jurisdiction in directing appointment of committee to secure ends of justice, to implement its directions for restoration of environment in view of S. 19(1) of NGT Act, 2010 and Or. 26 R. 10-A CPC — Tribunal also did not exceed its jurisdiction in directing constitution of a fund for implementing its directions**

— Tribunal has wider jurisdiction under S. 19(1) of NGT Act, 2010 than under Or. 26 R. 10-A CPC to appoint commission for scientific investigation and call for its reports and to pass such other orders to give effect to its orders and secure ends of justice, like constituting a fund as in present case — This does not take away essential judicial function, not delegated to such commission — Tribunal is in complete control as matter is pending before it — And State Government is at liberty to obtain appropriate direction, if it is aggrieved by any act of Committee — Committee appointed in present case is concerned only with environmental degradation and illegal coal mining — It does not affect powers of District/Regional Councils (Paras 195.14 to 195.19)

**b** — Object of NGT Act, 2010 is to provide effective and expeditious relief, compensation for damages, etc. and dispose of cases relating to protection of environment and forests and conservation of natural resources — Alleged pleading as well as materials before Tribunal were with regard to environmental degradation and pollution due to illegal and unregulated mining of coal (Paras 56 to 73)

**c** — State Government disputing jurisdiction of Tribunal to entertain such cases, disapproved — State has a constitutional obligation to ensure clean environment to its citizens, and, therefore, should have acted as a facilitator and not as obstructionist — Civil Procedure Code, 1908 — Or. 26 R. 10-A — Wider jurisdiction of NGT under S. 19 of 2010 Act vis-à-vis power of court under Or. 26 R. 10-A CPC, explained — Constitution of India — Art. 48 and Art. 244(2) r/w Sch. VI Para 12-A(b) and Sch. VII List II Entry 23, List I Entry 54 — National Green Tribunal (Practice and Procedure) Rules, 2011 — R. 24 — Interpretation of Statutes — Internal Aids — Enabling provisions — Use of words “may”, “such orders”, “gives such directions”, “as may be necessary or expedient”, “to give effect to its orders”, “order to prevent abuse of process”, in R. 24 of the NGT Rules, 2011, are words which enable the Tribunal to pass orders and the above words confer wide discretion — General Principles of Environmental Law — Environment Protection, Restoration, Rehabilitation Funds — Power of NGT to set up — Regulatory Framework, Bodies and Judicial Intervention — Court appointed Committees/CEC/Monitoring Committee — Powers of NGT to set up (Paras 56 to 73, 195.2, 195.3 and 157 to 171)

***Points for consideration***

From the submissions of the parties as noted and the materials on record in these appeals, the following points arose for consideration:

**h** (1) Whether orders passed by the National Green Tribunal are without jurisdiction being beyond the purview of Sections 14, 15 and 16 of the National Green Tribunal Act, 2010 (NGT Act, 2010)?

(2) Whether provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act, 1957) are applicable in tribal areas within the State of Meghalaya, included in the Sixth Schedule of the Constitution? a

(3) Whether for mining the minerals from privately owned/community owned land in Hills Districts of Meghalaya, obtaining a mining lease is a statutory requirement under the MMDR Act, 1957 and the Mineral Concession Rules, 1960 (the 1960 Rules)?

(4) Whether under the MMDR Act, 1957 and the Mineral Concession Rules, 1960, it is the State Government, who is to grant lease for mining of minerals in privately owned/community owned land or it is the owner of the minerals, who is to grant lease for carrying out mining operations? b

(5) Whether the State of Meghalaya has any statutory control over the mining of coal from privately owned/community owned land in Hills Districts of the State of Meghalaya?

(6) Whether the power to allot land for mining purposes is vested in Autonomous District Councils? c

(7) Whether the order of the National Green Tribunal dated 17-4-2014 directing for complete ban on mining is unsustainable?

(8) Whether the complete ban on mining of coal in the State of Meghalaya as directed by NGT deserved to be vacated/modified in the interest of the State and tribals? d

(9) Whether NGT had any jurisdiction to constitute committees to submit reports, to implement the orders of NGT, to monitor storage/transportation of minerals and to prepare action plan for restoration of environment?

(10) Whether NGT committed error in directing for constitution of fund, namely, Meghalaya Environment Protection and Restoration Fund (MEPR Fund)? e

(11) Whether NGT by constituting committees has delegated essential judicial powers to the committees and has further encroached the constitutional scheme of administration of tribal areas under Article 244(2) and Article 275(1) and Schedule VI of the Constitution?

(12) Whether direction to deposit Rs 100 crores by the State of Meghalaya by order dated 4-1-2019 of NGT impugned in CA No. 2968 of 2019 is sustainable? f

(13) Whether NGT's order dated 31-3-2016 that after 15-5-2016 all remaining coal shall vest in the State of Meghalaya is sustainable?

(14) Whether assessed and unassessed coal which has already been extracted and lying in different districts of Meghalaya be permitted to be transported and what mechanism be adopted for disposal of such coal? g

Partly allowing the appeals and disposing of the IAs, the Supreme Court

*Held :*

**Point 1**

The National Green Tribunal Act, 2010 was enacted to provide for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for h

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- damages to persons and property and for matters connected therewith or incidental thereto. (Para 56)
- a It is relevant to notice that before NGT no such plea was taken by the State of Meghalaya or any of the parties questioning the jurisdiction of NGT. However, the issue being a jurisdictional issue, the appellants were permitted to raise the issue. (Para 60)
- All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307, *approved*
- b The pleadings in OA No. 73 of 2014 clearly and categorically alleged environmental degradation consequent to illegal coal mining. Inaction of respondent authorities has resulted in violation of various enactments. (Paras 66 and 67)
- The present is not a case of mere allegation of environmental degradation by illegal and unregulated coal mining rather there were materials on the record where environmental degradation of water, air and surface of the land was
- c proved. (Para 68)
- Thus the Tribunal had jurisdiction to entertain the case and pass orders. The submission 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 matters the State has to act as facilitator and not as obstructionist. (Para 69)
- d *Techi Tagi Tara v. Rajendra Singh Bhandari*, (2018) 11 SCC 734, *distinguished*  
*Rajendra Singh Bhandari v. State of Uttarakhand*, 2016 SCC OnLine NGT 456, *held, reversed*
- The Tribunal did not exceed its jurisdiction under Sections 14 and 15 in entertaining the application OA No. 73 of 2014. (Para 73)
- Point 2**
- e Insofar as the land tenure in the Hills Districts of Meghalaya, there is no substantial change after the advent of the Constitution. There was no payment system of land revenue before the advent of the Constitution in the Hills Districts of Meghalaya. The lands in the Khasi Hills District of Meghalaya come under two divisions Ri Raid and Ri Kynti. Ri Raid lands are community lands which are set apart for the benefit and use of entire community. Ri Kynti lands are privately owned lands which were also owned by community as well as by individuals. The owner of the Ri Kynti land is an absolute proprietor. The tenure system in Jaintia
- f Hills is classified into two types of lands, namely, hali/irrigated land and highland. Hali lands are further categorised in raj land, service land, village puja land and private land. Proprietary right does not vest in the State in respect to majority of lands which are either privately owned or owned by the tribal community. No system of payment of land revenue is prevalent in the Hills Districts of Meghalaya
- g except lands which belong to the State. For the purposes of the present case where the submission of the appellant is that land in which mining operations of coal is being done are lands belonging to tribals who are owners of the land as well as of the subsoil, it may be assumed that tribal is the owner of the land. It is further the case of the appellant that in Hills Districts of the State of Meghalaya in land which is privately owned by the tribal or community owned, the tribals or the community or the clan are owners of both surface right and subsoil. It is the case of the appellant that the State does not have any right in subsoil or minerals. (Para 74)
- h *Thressiamma Jacob v. Deptt. of Mining & Geology*, (2013) 9 SCC 725 : (2013) 4 SCC (Civ) 559; *Anand Brahma Shah v. State of U.P.*, AIR 1967 SC 1081, *applied*

*Mitchell v. Mosley*, (1914) 1 Ch 438 (CA), *cited*

*Halsbury's Laws of England*, 3rd Edn., Vol. 26, p. 325, *referred to*

Thus, looking to the nature of the land tenure as applicable in the Hills Districts of the State of Meghalaya, most of the lands are either privately or community owned in which the State does not claim any right. Thus, private owners of the land as well as community owners have both the surface right as well as subsoil right. Thus the tribals owned the land and also owned the minerals, which is an inescapable conclusion. (Para 76)

Part X of the Constitution separately deals with scheduled and tribal areas. Hills Districts of the State of Meghalaya were treated to be tribal area and were to be governed by Article 244(2) read with Schedule VI. (Para 77)

No notification has been issued by the President under Para 12-A(b) of Schedule VI of the Constitution, although, the said Para 12-A(b) is in the Constitution with effect from 21-1-1972. Thus, there is nothing in the Sixth Schedule of the Constitution which may indicate about the inapplicability of the MMDR Act, 1957 with regard to the Hills Districts of the State of Meghalaya. (Para 83)

The Comptroller and Auditor General has clearly stated that the MMDR Act, 1957 is fully applicable for regulation of mines and regulation of minerals in the State of Meghalaya. (Para 84)

The Meghalaya Mines and Minerals Policy, 2012 issued by the Government of Meghalaya as well as draft guidelines of coal mining activities in the State prepared in the year 2015 have been brought on the record. The above guidelines were prepared after/in consultation with the Central Government. The above draft guidelines prepared by the State clearly mention about the unregulated and unscientific mining being carried out in the State of Meghalaya. (Paras 85 to 88)

There can be no dispute to the proposition that in view of the MMDR Act, 1957, the legislative competence of the State of Meghalaya under List II Entry 23 stands denuded. However, under the MMDR Act, 1957 as well as the Mineral Concession Rules, 1960, several statutory obligations/jurisdictions have been conferred on the State of Meghalaya, which shall be referred to later in this judgment. (Para 90)

When under a parliamentary enactment, the State has been given some statutory obligations, there is no lack of jurisdiction in the State to frame policy to give effect to or implement the jurisdictions conferred on the State by parliamentary enactments. It is true that Mining Policy to be framed by the State has to confine to the jurisdiction conferred on it as per the MMDR Act, 1957 and the Rules framed thereunder. There are other related issues concerning mining like protection of environment and forests for which the State has to declare its policy for implementation of its objective. Several other aspects relating to mining, like rehabilitation, reclamation and restoration have to be effectively implemented by the State for which also, it may be required to frame a policy. The Meghalaya Mines and Minerals Policy, 2012 was already framed by the State of Meghalaya, even before directions were issued by NGT. In pursuance of the NGT directions, it was draft guidelines of 2015, which were prepared by the State of Meghalaya. Thus the direction of NGT to declare Mining Policy by the State of Meghalaya cannot be said to be without jurisdiction. However, the State in its Mining Policy can only include those areas where it has jurisdiction under the MMDR Act, 1957 and the Rules framed thereunder. (Para 91)

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*a* The request of the State of Meghalaya that exemption be granted by presidential notification under Para 12-A(*b*) has not been acceded to and this itself expresses recognition of the State of Meghalaya that the MMDR Act is applicable. There is nothing in the Sixth Schedule of the Constitution which in any manner excludes the applicability of the MMDR Act, 1957 in the tribal areas of Hills Districts of the State of Meghalaya. (Para 93)

*Point 3*

*b* The legislative power under List II Entry 23 is subject to the provision of List I with respect to regulation and development under the control of the Union. When the Union has declared to have taken under its control the regulation of mines and development of minerals to the extent provided in the Act, the legislative power of the State to the above extent is denuded. (Para 98)

*c* The use of words “no person” in Section 4(1) of the MMDR Act, 1957 is without an exception. There is nothing in Section 4(1) to indicate that restriction contained in Section 4(1) does not apply with regard to a person who is owner of the mine. Further, words “any area” under Section 4(1) also have significance which does not have any exception. Further phrase “except under and in accordance with terms and conditions with a mining lease granted under the Act” are also significant which make the intent and purpose of prohibition clear and loud. (Para 101)

*d* The Section 5(1) proviso of the MMDR Act, 1957 is relevant since it contains a further restriction that no mining lease shall be granted with regard to any minerals specified in Para A of the First Schedule except with the previous approval of the Central Government. The present case is concerned with coal which is in Para A of First Schedule. (Para 102)

*e* Sections 13(2)(*a*) and (*f*) of the MMDR Act, 1957 make it clear that the Rules can be made for grant of mining lease in respect of land in which minerals vest in the Government as well as in respect of any land in which minerals vest in person other than the Government. The statutory scheme, in Sections 13(2)(*a*) and (*f*) of the MMDR Act and the Mineral Concession Rules, 1960 is clear that lease can be granted with regard to both the categories of land, land in which the Government is owner of minerals and land in which minerals vest in person other than the Government. The tribals, owners of the minerals shall expressly fall in rule-making power of the Government under Section 13(*f*). (Paras 104 to 106)

*f* In statutory provisions there is no kind of exception as contended by the appellant that when owner himself wants to win the minerals he does not require any mining lease. The submission is contrary to the express statutory scheme, in the event the submission of the appellant is accepted that with regard to minerals which vest in a private person no mining lease is required, the whole object of the Union by which it declared to have taken under its control regulation of mines and development of minerals shall be frustrated. (Para 106)

*g* The term “lease” occurring in Section 3(*c*) of the MMDR Act does not appear to have been used in the narrow technical sense in which it is defined in Section 105 of the Transfer of Property Act, 1882 but it has all the characteristics of a lease as defined in the Transfer of Property Act. A mining lease, therefore, may not meticulously and strictly satisfy in all cases, all the characteristics of a “lease” as defined in the Transfer of Property Act. Nevertheless, in the legally accepted sense,

*h* it has always been regarded as a lease in this country. (Paras 106 to 112)

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*Tarkeshwar Sio Thakur Jiu v. Dar Dass Dey & Co.*, (1979) 3 SCC 106; *Nageshwar Bux Roy v. Bengal Coal Co. Ltd.*, 1930 SCC OnLine PC 83 : (1930-31) 58 IA 29; *State of Karnataka v. Subhash Rukmayya Guttedar*, 1993 Supp (3) SCC 290, *relied on*

*Falakrishna Pal v. Jagannath Marwari*, 1932 SCC OnLine Cal 80 : AIR 1932 Cal 775, *held, approved*

a

The words “mining lease” have been given specific meaning under the MMDR Act, 1957. The provisions of an Act including definition of a term are to be interpreted in a manner which may advance the object of the legislation. The essential characteristic of mining lease is that it is granted *for the purpose of undertaking mining operation* and mining operation means any operation undertaken for the purpose of winning the mineral. Applying the aforesaid definition in the Mineral Concession Rules, 1960 under Chapter V it cannot be said that no mining lease is contemplated with respect to land where mineral vests exclusively in a private person. (Para 112)

b

[**Ed.**: The exploitation of the mineral wealth underlying his land by an owner appears to be conceptually no different from the raising of a building by an owner on his land. In the former case, he must comply with the law applicable to mining. In the latter case he must comply with building and planning laws. Moreover, when an owner himself mines his land, the “mining lease” contemplated by S. 4 of the MMDR Act, 1957 would probably take the form of a permit, and would not require a conveyance of the land in terms of a “lease” proper. As clarified herein, though a mining lease is often a lease proper, it need not necessarily be so always.]

c

Section 5(3), Mines Act, 1952 clearly empowers the District Magistrate to exercise the powers and perform the duties of an Inspector but subject to general and special orders of the Central Government, which means that there may be some restriction on the power of the District Magistrate as directed by the Central Government. (Para 116)

d

In this context, a Notification dated 18-9-1953 issued under Section 5(3) of the Mines Act, 1952 may be referred to. (Para 116)

e

The restriction as is apparent from the above notification is with regard to matters solely connected with the technical direction, management or supervision of any mine. The above notification does not take away all the functions of the District Magistrate but restriction is with regard to area mentioned therein. (Para 117)

f

Thus it cannot be accepted that the District Magistrate has no jurisdiction under the Mines Act, 1952 to take any action. (Para 118)

As per statutory regime brought in force by the Notification dated 15-1-2016 environmental clearance is required for a project of coal for mining of any extent of area. The Notification dated 15-1-2016 being a statutory provision shall operate on its own force and no order of any court is required for enforcement of Notification dated 15-1-2016. (Para 121)

g

While implementing statutory regime for carrying on mining operations in the Hills Districts of the State of Meghalaya, the State of Meghalaya has to ensure compliance of not only the MMDR Act, 1957 but the Mines Act, 1952 as well as the Environment (Protection) Act, 1986. (Para 122)

h

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**Point 4**

*a* There is a marked difference between the rules contained in Chapter IV and rules contained in Chapter V of the Mineral Concession Rules, 1960. (Para 125)

*b* The earlier statutory regime, which was enforced as per the Mineral Concession Rules, 1949 made it amply clear that mineral concessions are to be granted by private persons also, which is in substance retained in Chapter V of the 1960 Rules. Thus, mining lease to be granted as per Chapter V of the 1960 Rules is mining lease by the owner of mineral. Thus, the lessor being the private persons and not the State Government, clearly indicates that the State Government is not to grant the lease in respect of land of privately owned/community owned owners. (Paras 124 to 129)

*c* The reason for not providing any application to the State Government for grant of mining lease in respect of minerals, which vests in the private owners and community owners is that without consent or willingness of private owners/community owners of minerals, no authority is empowered to grant any mining lease with regard to minerals, of which he is the owner, it is the owner of the minerals, may be private persons or community owners, who is entitled to grant lease of minerals as per the provisions of Chapter V of the 1960 Rules. (Para 130)

*d* As per the statutory provisions contained in the 1960 Rules especially Chapter V, a mining lease for minerals, which belongs to a private owner or a community owner, it is not the State Government, which is entitled to receive any application or grant any mining lease, but it is the private owner or community owner, who is entitled to grant a lease for mining minerals owned by them. Issue 4 is answered accordingly. (Para 131)

**Point 5**

*e* The State Government cannot say that it has no role to play with regard to mining of coal. All applications for previous approval of the Central Government have to be routed through the State Government. (Para 134)

*f* When mining operations of coal are being conducted without prior approval of the Central Government, the State has power under Rule 50 of the Mineral Concession Rules, 1960 to direct the parties not to undertake any prospective mining operations in the area. The power given under Rule 50 is not only enabling power, but is a statutory obligation on the State to exercise the power in the public interest. (Para 135)

Thus the State of Meghalaya has jurisdiction and power to ensure that no mining of coal should take place except when a mining lease granted under the Mineral Concession Rules, 1960, Chapter V. (Para 139)

**Point 6**

*g* It is submitted that Autonomous District Council being constitutional authority constituted under Schedule VI of the Constitution has legislative and administrative power. (Para 141)

*h* The power to make law entrusted to Autonomous District Council under Para 3 of Schedule VI is power to make law referable to List 2 and List 3 of the Seventh Schedule. However, with regard to regulation and development of mineral, the Union has made declaration by Section 2 of the MMDR Act, 1957 and the power of the State Legislature is denuded in that respect. The logical corollary of the above principle is that power of Autonomous District Council shall also be denuded

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insofar as regulation and development of minerals to the extent which is covered by the MMDR Act, 1957. (Para 142)

Para 9(1) of Schedule VI confines to the licences or leases of minerals granted by the Government of the State. Para 12-A(a) of Schedule VI itself contemplates that any law made by the District Council or Regional Council which is repugnant to any law of the State shall be void. Thus, the status of law made by the District Council or Regional Councils has to give way to the law made by the State. There can be no doubt that the District Council and Regional Council cannot make any law which may be repugnant to the provisions of the parliamentary Act. (Para 146)

Thus the District Council does not have any power to make any law with regard to grant of mining lease. The mining leases for winning the major minerals has to be granted in accordance with the MMDR Act, 1957 and the 1960 Rules. (Para 147)

**Points 7 and 8**

The use of natural resources also plays major role in carrying out development. A fine balance has to be maintained in utilisation of natural resources and its conservation and preservation. One cannot be sacrificed for the interest of other. The concept of sustainable development has been evolved and is being pursued. (Para 149)

*State of T.N. v. Hind Stone*, (1981) 2 SCC 205; *Lafarge Umiam Mining (P) Ltd. v. Union of India*, (2011) 7 SCC 338, *relied on*

*Narmada Bachao Andolan v. Union of India*, (2000) 10 SCC 664, *cited*

The Tribunal prohibited the rat-hole mining/illegal mining throughout the State of Meghalaya. (Para 150)

The Tribunal being satisfied from the materials on record has issued the order dated 17-4-2014 which cannot be faulted in the facts and materials which are on record in the present case. One more fact in the above context needs to be noticed i.e. after the order dated 17-4-2014, several applicants including the appellants of Civil Appeal No. 5272 of 2016 filed application for vacating the ban which was not acceded to by the Tribunal. Subsequently NGT permitted transportation of coal till 15-5-2016 and directed that after 15-5-2016, all coal within the State of Meghalaya shall vest in the State. (Paras 150 and 152)

The Tribunal after considering all pleas and materials including reports submitted by the committees affirmed the order dated 17-4-2014 and refused to withdraw the ban. There is no error in the order of NGT reaffirming its ban order in the facts of the present case. But the question which has been raised by the appellant before the Supreme Court is that whether the complete ban as imposed by NGT deserves to be vacated or modified in the interest of the State and tribals. The revenue earned by the State from coal mining plays substantial part in the economy of the State. It is also amply demonstrated from the record that tribals are the owners of the land who carry on mining of coal in their land by which they earn their substantial livelihood. (Para 153)

Though as discussed above, the manner in which the mining is being carried out by the tribals cannot be approved which is clearly in violation of statutory regime under the MMDR Act, 1957 and the 1960 Rules but in event the mining is carried out by tribals or their assignees as per the provisions of the MMDR Act, 1957 and the 1960 Rules, there can be no objections in carrying on such mining under the regulation and control of the State of Meghalaya. It is thus clarified that in event mining operations are undertaken by the tribals or other owners of Hills

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*a* Districts of Meghalaya in accordance with mining lease obtained from the State of Meghalaya as per the MMDR Act, 1957 and the 1960 Rules, the ban order dated 17-4-2014 of the Tribunal shall not come in its way of carrying on mining operations. The ban order is for the illegal coal mining which was rampant in the State of Meghalaya and the ban order cannot be extended to valid and legal mining as per the MMDR Act, 1957 and the 1960 Rules. (Para 154)

**Points 9 and 10**

*b* What Section 19(1) of the NGT Act, 2010 means to convey is that the Tribunal is not shackled with the procedure laid down by CPC for conducting its proceedings. Section 19(2) empowers the Tribunal with powers to regulate its own procedure. Section 19(2) confers vide powers on the Tribunal insofar as its procedure is concerned. Section 19(4) vests some powers as are vested in the civil court, while trying a suit, in respect of matters enumerated therein. The use of the expression “shall not be bound by the procedure laid down by CPC” is not  
*c* akin to saying that procedure as laid down by CPC is in no manner relevant to the Tribunal. Further, Section 19(1) also does not mean that the Tribunal cannot follow any procedure given in CPC. (Para 157)

*d* Order 26 Rule 10-A CPC is enabling power to the courts to obtain report from such persons as it thinks fit when any question involves scientific investigation. The powers under Order 26 Rule 10-A CPC which are to be exercised by the court can very well be used by NGT to obtain reports by experts. NGT as per the statutory scheme of NGT has to decide several complex questions pertaining to pollution and environment. The scientific investigation and report by experts are necessary requirement in appropriate cases to come to correct conclusion to find out measures to remedy the pollution and environment. Thus there is no dearth of jurisdiction in NGT to appoint a committee to submit a report. Further, while asking expert to give a report NGT is not confined to the four corners of Order 26 Rule 10-A CPC rather its jurisdiction is not shackled by strict terms of Order 26 Rule 10-A CPC as  
*e* per Section 19(1) of the NGT Act, 2010. (Para 158)

*f* Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. Rule 24 gives wide powers to the Tribunal to secure the ends of justice. Rule 24 vests special power to the Tribunal to pass orders and issue directions to secure ends of justice. Use of words “may”, “such orders”, “gives such directions”, “as may be necessary or expedient”, “to give effect to its orders”, “order to prevent abuse of process”, are words which enable the Tribunal to pass orders and the above words confer wide discretion. (Para 160)

G.P. Singh in *Principles of Statutory Interpretation*, 14th Edn., referred to

*g* The enabling powers given to the Tribunal under Rule 24 of the NGT Rules, 2011 are for the purpose and object to decide the subjects which are to be examined, decided and an appropriate relief is to be granted by the Tribunal. Further, subjects contain wide range of subjects which require technical and scientific inputs. The Tribunal can pass such orders as it may think fit, necessary or expedient to secure ends of justice. (Para 162)

*h* The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The

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power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. (Para 163)

a

*L. Hirday Narain v. CIT, (1970) 2 SCC 355, considered*

Thus there is no lack of jurisdiction in NGT to direct for appointment of committee or to obtain a report from a committee in the given facts of the case. (Para 164)

Now coming to the challenge to the Fund which has been constituted by the Tribunal, namely, "MEPR Fund", it is useful to notice the observation of the Tribunal in its order dated 25-3-2015 by which the said Fund was created. The reasons for constitution of Fund are self-explanatory. (Para 165)

b

*All Dimasa Students Union v. State of Meghalaya, 2015 SCC OnLine NGT 697, affirmed*

NGT could have passed any order or direction to secure ends of justice which power is especially conferred by Rule 24 as noticed above, direction to constitute Fund is thus also saved under such power. (Para 166)

c

**Point 11**

In respect of constitution of committee by the Tribunal there are two other limbs of submission; that: (1) NGT by constituting committees has delegated essential judicial power to the committee; (2) the constitution of committees encroaches on the constitutional scheme of administration of tribal areas under Article 244(2) read with the Sixth Schedule of the Constitution. (Para 167)

d

The various instances where NGT directed for report or investigation and submission of report by committees were with the object of ensuring the implementation of the orders passed by it and to decide the environmental issues raised before it. In no manner constitution of committee can be said to be delegation of essential judicial powers of NGT to the committee. (Para 168)

The constitution of the Committee and its functions entrusted were with the object to implement the orders passed by the Tribunal. The Tribunal has already directed for preparing a scheme for the restoration of the environment and ecology. For the restoration of environment NGT vide its order dated 31-8-2018 has directed the Committee to submit its action plan and reports by email. The Tribunal, thus, had kept complete control on all steps which were required to be taken by the Committee and issued directions from time to time. It thus cannot be accepted that the essential judicial powers of NGT had been delegated to the Committee. Looking to the enormous work of restoration of environment which has to be supervised on the spot, the Committee was constituted. The State is always at liberty to obtain particular direction if aggrieved by any act of the Committee. The matter being pending before the Tribunal the acts of the Committee are under direct control of the Tribunal and if the committee oversteps in any direction the same can very well be corrected by the Tribunal on the matter being brought before it. (Para 170)

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*All Dimasa Students Union v. State of Meghalaya, 2018 SCC OnLine NGT 671, approved*

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In the directions of the Tribunal to constitute committee for transportation of extracted minerals or for preparing time-bound action to deal with the restoration of environment and to ensure its implementation, there is no interference in the powers of the District or Regional Councils. Action plan for restoration of environment is consequence of the Tribunal finding out that an unregulated coal mining has damaged the environment and has caused the pollution including water pollution. It is not the case of the appellant that the District and Regional Councils have

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- a* framed any law for restoration of environment which is being breached by the Committee or its acts. The District and Regional Councils are free to exercise all their powers and the Committee constituted by the Tribunal is only concerned with the environmental degradation and illegal coal mining. The Committee's report or direction of the Tribunal in no manner encroaches upon the administration of tribal areas by the District and Regional Councils. (Para 171)

**Point 12**

- b* NGT vide its order dated 4-1-2019 directed the State of Meghalaya to deposit an amount of Rs 100 crores with the Central Pollution Control Board, which was to be spent for restoration of environment. (Para 172)

*Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2019 SCC OnLine NGT 105, modified

*All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307, cited

- c* The amount, which has been directed by NGT to be deposited by the State of Meghalaya is neither a penalty nor a fine imposed on the State. The amount has been directed to be deposited for carrying out steps regarding restoration of environment. The said amount cannot be said to be amount for damages to be paid by the State. Further, the State of Meghalaya has very limited source of revenue and putting an extra burden on the State of Meghalaya to make payment of Rs 100 crores from its own financial resources and budgetary amount may cause great hardship to the State of Meghalaya. Ends of justice will be served in modifying the direction of NGT dated 4-1-2019 to the extent that the State is permitted to transfer an amount of Rs 100 crores from the amount lying in the MEPRF to the Central Pollution Control Board. The Central Pollution Control Board as directed by the Tribunal (NGT) shall utilise the aforesaid amount of Rs 100 crores only for restoration of the environment. The appeal is thus, partly allowed to the above extent. (Para 182)

- e* *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2019 SCC OnLine NGT 105, modified

*All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307, cited

**Point 13**

- f* Vide order dated 31-3-2016, NGT had permitted transportation of coal till 15-5-2016 under the terms and conditions as enumerated therein. The order dated 31-3-2016 further contemplated that no coal in any form whatsoever shall be permitted to be transported after 15-5-2016 on which date the entire remaining coal shall vest in the State Government and shall be disposed of in accordance with law. (Para 183)

- g* The main grievance of the appellant is that NGT could not have directed for vesting of coal in the State. It has already been held in the present case that the private owners of the land are also owners of the minerals and the minerals belong to the owners/tribals. And it has been found that coal mining was illegally going on unregulated by any statutory law in the Hills Districts of the State of Meghalaya without there being any mining lease. The entire mining was, thus is clear, in contravention of Section 4(1) of the MMDR Act, 1957 which attracted penalties under Section 21. (Para 184)

- h* However, the present is not a case where any kind of penalty has been imposed on the miners except that the amount of royalty as payable on mining of coal is being collected by the State as penalty. It is true that the State Government

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has power under Section 21(5) of the MMDR Act, 1957 to recover from such person the minerals so raised, or, where such material has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, but it is for the State Government to exercise its power under Section 21(5) by way of penalty. NGT has not given any reason as to how coal shall automatically vest in the State. The right of recovery of mineral as contemplated under Section 21(5) does not amount to say that proprietary right of owner of the minerals is lost, rather, the State under Section 21(5) exercises its power to recover the mineral which has been raised without any lawful authority. Therefore, the coal extracted and lying in open after 15-5-2016 was not automatically vested in the State and the owner of the coal or the person who has mined the coal shall have the proprietary right in the mineral which shall not be lost. (Para 186)

**Point 14**

It is not necessary for the purpose of the present case to notice different quantities and claims of different persons for transportation. (Para 187)

*Lber Laloo v. All Dimasa Students Union*, (2019) 16 SCC 317 : 2019 SCC OnLine SC 698; *Lber Laloo v. All Dimasa Students Union*, 2018 SCC OnLine SC 3330, referred to

The details of assessments made by committees appointed by the State of Meghalaya have been brought on the record. The State Government itself has come with a case that huge quantity of coal in the four Hills Districts, which has been extracted, is lying waiting for orders of transportation. (Para 188)

The entire extracted coal lying at various places be directed to be taken over by Coal India Ltd., a Government of India unit, who may dispose of the same as per its normal method of disposal and proceeds be distributed as per directions issued by the Supreme Court hereinafter. NGT has already directed that for all extracted coal lying at different places, it is the State, which is the receiver-cum-custodian of the coal. The State having carried out the assessment of the coal lying in the aforesaid four districts including the details of the quantities and the details of owners being available with it, it may ensure that the entire coal is handed over to Coal India Ltd., as per the mode and manner to be formulated by the Katakey Committee, in consultation with officers of Coal India Ltd. and the State of Meghalaya. (Para 190)

The Katakey Committee and its various members and participants have done a commendable job in studying and examining various aspects of environment in the State of Meghalaya and several valuable suggestions have been given by the Committee, which are also being implemented to mitigate the suffering of the citizens consequent to the illegal coal mined. (Para 191)

The Commissioner and Secretary of the State in the Department of Mining and Geology along with the officers of Coal India Ltd. may deliberate with the Katakey Committee to finalise a comprehensive plan for transportation and handing over of the coal to Coal India Ltd. for disposal/auction as per rules of Coal India Ltd. Disposal/auction by Coal India Ltd. shall be beneficial to both the owners of the mines as well as to the State of Meghalaya. Receiving fair value of the coal should be a concern of both the owners and the State. It is for Coal India Ltd. to decide as to venue, where they shall receive the coal i.e. either at any of its depot or any other place in the State of Meghalaya and it is for Coal India Ltd. to finalise the process of disposal and auction of the coal. It goes without saying that it shall be the duty of the State of Meghalaya and its officers, especially the Deputy Commissioner of the area concerned to enter details of quantity of the coal, name of the owner and place from

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a where it is collected. Coal India Ltd. shall also take steps to ensure weighment of the coal when it is received by it and since all consequent steps regarding disposal, price grade of the coal shall be determined as per the weight of the coal received by Coal India Ltd. from different places. The expenses of transportation shall be borne by the State of Meghalaya, Coal India Ltd. or by both, which expenses shall be deductible from the price received of the coal. The State of Meghalaya shall be entitled to royalty and payment towards MEPR Fund as well as taxes out of the price of the coal. After deduction of cost of transportation, the payment of royalty and payment to MEPR Fund and taxes plus 10% of value of the coal to be given to Coal India Ltd. for the above exercise, balance amount shall be disbursed to the owner of the coal towards its price, which disbursement shall be the responsibility of the State. Coal India Ltd. after taking its expenses for transportation with 10% of price of the coal shall remit the entire amount to the State and it is for the State after deducting the royalty and payment to the MEPR Fund and taxes to pay back the balance of the amount to the owner. (Para 192)

c Another aspect of the matter is also to be noticed. The coal, which has been seized by the State in illegal transportation or illegal mining for which different cases have been registered by the State, is not to be dealt with as directed above. The said seized coal shall be dealt with by the State in accordance with Section 21 of the MMDR Act, 1957 and on being satisfied, the State can take a decision to recover the entire quantity of coal so illegally raised without lawful authority and the said cases have to be separately dealt with in accordance with law. (Para 193)

d Thus all IAs filed by different applicants seeking order of transportation of the different quantities stand disposed of in view of the directions as given above. Let the Katakey Committee in consultation with the State of Meghalaya and officers of Coal India Ltd. finalise appropriate mode and manner to effect the transport and disposal of the coal in the above manner. (Para 194)

e *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241; *All Dimasa Students Union v. State of Meghalaya*, 2016 SCC OnLine NGT 174, partly affirmed

*Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2019 SCC OnLine NGT 105, modified

*All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307, approved

f *All Dimasa Students Union v. State of Meghalaya*, 2016 SCC OnLine NGT 422, partly overruled

*Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2013 SCC OnLine NGT 4489; *Lber Laloo v. All Dimasa Students Union*, 2019 SCC OnLine SC 744; *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1243, referred to

g *Lawrence Basaiawmoit v. All Dimasa Students Union*, (2015) 14 SCC 416; *Impulse NGO Network v. State of Meghalaya*, 2014 SCC OnLine NGT 2565; *Impulse NGO Network v. State of Meghalaya*, 2014 SCC OnLine NGT 7157; *All Dimasa Students Union v. State of Meghalaya*, 2015 SCC OnLine NGT 839; *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn. v. All Dimasa Students Union*, 2016 SCC OnLine SC 1830; *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn. v. All Dimasa Students Union*, 2016 SCC OnLine SC 1831; *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn. v. All Dimasa Students Union*, 2018 SCC OnLine SC 3431, cited

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Advocates who appeared in this case :

A.N.S. Nadkarni, Additional Solicitor General, Amit Kumar, Advocate General (State of Meghalaya), Shekhar Naphade, Raju Ramachandran, Amarendra Sharan, Colin Gonsalves, Sanjay R. Hegde, Anupam Lal Das, Nidhesh Gupta, Ms Meenakshi Arora, R. Basant and Sidharth Luthra, Senior Advocates (Sammarth Khanna, Ms Ekta Gupta, Ms Sukriti Bhatnagar, Durga Dutt, Shaurya Sahay, Atul Kumar, Ms Rekha Bakshi, T.K. Nayak, Prakash Singh Negi, Chetan Joshi, Ms Laxmi Iyer, Abhikalp Pratap Singh, Kumar Abhishek, Avijit Mani Tripathi, Yoginder Handoo, P. Yobin, Prashant Bhatnagar, Saurabh, Prithvi Pal, Naresh Kr. Nagar, Amit Kumar, Avijit Roy, V. Senthil Kumar, Satish Kumar, Theerthe Gowda N.M., G. Sughumaran, Ms Arunima Dwivedi, Pranay Ranjan, Ms Suhasini Sen, Gurmeet Singh Makker, Tayenjam Mamo Singh, Ms T. Archana, Ranjan Mukherjee, S. Bhowmick, K.V. Kharlyngdoh, Deniel Stone Lyngdoh, Upendra Mishra, Dr Gajendra Pal Singh, Ms Olivia Bang, Satya Mitra, Arvind Kr. Sharma, Ahanthem Henry, A. Rohen Singh, Vivek Kumar, Phillemon N., Kumar Mihir, Ms Aruna Mathur, Ms Anuradha Arputham, Avneesh Arputham, Ms Geetanjali, M/s Arputham Aruna and Co., Ms Vandana Sehgal, Ms Japneet Kaur, Ms Vriti Gujral, Ms Pallavi Singh, Dileep Tandon, Ms Neha Tandon, R.B. Phookan, Shailesh Madiyal, Subhro Sanyal, Ms Soumya Roop Sanyal, Somesh Chandra Jha, Sameer Kumar, Ms Heema Rohra, Nirnay Gupta and Kawaljeet Singh Bhatia, Advocates) for the appearing parties.

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The Judgment of the Court was delivered by

**ASHOK BHUSHAN, J.**— Natural resources of the country are not meant to be consumed only by the present generation of men or women of the region where natural resources are deposited. These treasures of nature are for all generations to come and for intelligent use of the entire country. The present generation owes a duty to preserve and conserve the natural resources of the nation so that it may be used in the best interest of coming generations as well and for the country as a whole.

2. These appeals have been filed challenging various orders passed by the National Green Tribunal wherein several directions were issued, measures to be taken to check and combat the unregulated coal mining in tribal areas of the State of Meghalaya which coal mining resulted not only in loss of lives but damaged the environment of the area.

*Details of appeals*

3. Civil Appeals Nos. 10720 of 2018, 10611 of 2018 and 10907 of 2018 have been filed against the order dated 31-8-2018<sup>1</sup> passed by the National Green Tribunal, Principal Bench, New Delhi. Civil Appeal No. 5272 of 2016 has been filed by KA Hima Nongstoin Land Owners, Coal Traders and Producers Association against the order dated 10-5-2016<sup>2</sup> of the National Green Tribunal, Principal Bench, New Delhi. Civil Appeal (Diary No. 3067) of 2018 has been filed by Lber Laloo against the order dated 25-3-2015<sup>3</sup> of the National Green Tribunal, Principal Bench, New Delhi and Civil Appeal No. 2968 of 2019 has been filed against the order dated 4-1-2019<sup>4</sup> of the National Green Tribunal, Principal Bench, New Delhi by which the State of Meghalaya has been directed to deposit Rs 100 crores with the Central Pollution Control Board.

4. All the appeals having been filed against the orders of the National Green Tribunal (NGT), it is necessary to notice the details of various proceedings before NGT to appreciate the grievances raised in the appeals. The Gauhati High Court on the basis of a news item to the effect that on 6-7-2012, 30 coal labourers were trapped inside a coalmine at Nongalbibra in the district of South Garo Hills and 15 of them died inside the coalmine, registered PIL Suo Motu No. (SH) 3 of 2012. Vide order dated 10-12-2012 of the Gauhati High Court the matter was directed to be transferred to NGT in which notice was issued by the Tribunal on 30-1-2013<sup>5</sup>. Transferred matter was registered as Original Application No. 110 (THC) of 2012. All Dimasa

1 *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241

2 *All Dimasa Students Union v. State of Meghalaya*, 2016 SCC OnLine NGT 174

3 *All Dimasa Students Union v. State of Meghalaya*, 2015 SCC OnLine NGT 697

4 *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2019 SCC OnLine NGT 105

5 *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2013 SCC OnLine NGT 4489

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*a* Students Union Dima Hasao District Committee filed Original Application No. 73 of 2014 before the National Green Tribunal, Principal Bench making serious complaints with regard to rat-hole mining operation, which has been going on in Jaintia Hills in the State of Meghalaya for the last many years without being regulated by any law. It was alleged that in the course of rat-hole coal mining by flooding water several employees and workers have died. The applicant had also brought before the Tribunal a detailed report of one *b* Dr O.P. Singh, Professor, Department of Environmental Studies, North-Eastern Hills University, Shillong, Meghalaya where entire aspects of the coal mining in the State of Meghalaya were discussed. NGT admitted the application and took the view<sup>6</sup> that illegal and unscientific mining can neither be held to be in the interest of people of the area, the people working in the mines nor in the interest of environment. After hearing the applicant, the Tribunal on 17-4-2014<sup>6</sup> *c* passed an order directing the Chief Secretary of Meghalaya, Director General of Police, State of Meghalaya to ensure that rat-hole mining/illegal mining is stopped forthwith throughout the State of Meghalaya and any illegal transport of coal shall not take place until further orders passed by the Tribunal.

*d* 5. After the passing of the order dated 17-4-2014<sup>6</sup> various applications were filed before the Tribunal by different Associations and persons claiming interest in the subject-matter of the application. Application No. 317 of 2019 was filed by Western Coal Miners and Exporters Association for being impleaded in OA No. 73 of 2014, which was allowed. Another application MA No. 306 of 2014 was filed by Khasi Hills District Autonomous District Council, Shillong, East Khasi Hills District, Meghalaya (one of the appellants before us) for impleadment claiming to be a constitutional body and entitled in the sharing *e* primarily of the royalty on the coal produced/mined, which application was allowed.

*f* 6. The Tribunal clubbed OA No. 13 of 2014, OA No. 73 of 2014 and OA No. 110 (THC) of 2012. Miscellaneous applications were filed before the Tribunal praying for vacating the order dated 17-4-2014<sup>6</sup>. Against the order dated 17-4-2014<sup>6</sup>, CA No. 5756 of 2014 was filed by a coalmine owner. The miscellaneous application was also filed by the State Coordination Committee of Jaintia Hills District, Meghalaya (one of the appellants before us) for their impleadment, which was allowed<sup>7</sup>. This Court dismissed the civil appeal filed against the order dated 17-4-2014<sup>6</sup> passed by the Tribunal, however, *g* granted liberty to the appellant to approach the Tribunal for modification of the order. The Tribunal also noticed in its order dated 9-6-2014<sup>8</sup> that there has been serious air, water and environmental pollution being caused by the illegal, unregulated and indiscriminate rat-hole mining being carried on in various parts of the State of Meghalaya. Serious pollution to the upstream

*h* <sup>6</sup> *All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307

<sup>7</sup> *Lawrence Basaiawmoit v. All Dimasa Students Union*, (2015) 14 SCC 416

<sup>8</sup> *Impulse NGO Network v. State of Meghalaya*, 2014 SCC OnLine NGT 2565

was also noticed. The Tribunal, however, noticed that there are documents on record to show that right from the year 2003, there has been serious air and water pollution in the mining areas of Meghalaya which is injurious and has not only resulted in degradation of environment, particularly the streams and underground water, but has also seriously jeopardised the human health. It was further noticed that transportation of coal in an illegal, unregulated, indiscriminate and unscientific manner has resulted in serious diseases to the people. The report of the Committee dated 9-6-2014<sup>8</sup> was noticed by the Tribunal. By order dated 9-6-2014<sup>8</sup> while permitting the transportation of the already extracted coal lying in open near the mining sites, constituted a committee for supervising such transportation. Various other directions were issued to the Committee as well as to the State and its authorities.

7. By a subsequent order dated 1-8-2014<sup>9</sup> the Tribunal noticed that the committee earlier constituted by order dated 9-6-2014<sup>8</sup> failed to perform the functions assigned to it, hence, a new committee was constituted. The Tribunal from time to time issued various directions. We need to notice four orders passed by the Tribunal in detail which are subject-matter of challenge in these appeals. The orders which are subject-matter in these appeals are orders dated 25-3-2015<sup>3</sup>, 10-5-2016<sup>2</sup>, 31-8-2018<sup>1</sup> and 4-1-2019<sup>4</sup>.

**Order dated 25-3-2015<sup>3</sup>**

8. In order dated 25-3-2015<sup>3</sup> NGT noticed that the rampant, illegal, unscientific and life-threatening mining activity, particularly rat-hole mining is going on in the State of Meghalaya for years. NGT noticed the report of the Commissioner appointed by it and opined that in spite of the order dated 17-4-2014<sup>6</sup> fresh mining was going on. The Tribunal also noticed that the State of Meghalaya has promulgated a Mining Policy of 2012 which does not deal with rat-hole mining. The State Government was also directed to formulate and declare Mining Policy and Guidelines for the State of Meghalaya to deal with all aspects of mining, which Policy was yet to see the light of the day. The Tribunal also noticed that the order of the Tribunal has been violated by illegal mining despite complete prohibitory orders. It was noticed that the State Government has found as many as 73 cases of illegal transportation of coal in one district. Further, 15 more cases of specific violation of NGT orders had already been registered by the State Government. In all 11 districts of the State of Meghalaya, 308 cases of violation have been registered and a total number

8 *Impulse NGO Network v. State of Meghalaya*, 2014 SCC OnLine NGT 2565

9 *Impulse NGO Network v. State of Meghalaya*, 2014 SCC OnLine NGT 7157

3 *All Dimasa Students Union v. State of Meghalaya*, 2015 SCC OnLine NGT 697

2 *All Dimasa Students Union v. State of Meghalaya*, 2016 SCC OnLine NGT 174

1 *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241

4 *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2019 SCC OnLine NGT 105

6 *All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307

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a of 605 trucks and 2675.63 tonnes of coal has been seized. The stand of the State for non-compliance and its inability to comply with the direction was also noticed to the following effect:

“(a) Lack of forces to carry out counter insurgency operations and implementation of NGT orders.

b (b) The State Government proposes to approach the Central Government for claiming an exemption, in terms of Para 12-A(b) of the Vth Schedule of the Constitution of India and from the condition of previous approval of the Central Government under the Mines and Minerals (Development and Regulation) Act, 1957 in respect of reconnaissance, prospecting and mining of coal and from the operations of the Coal Mines Nationalisation Act.”

c 9. The Tribunal issued directions that the Additional Secretary, North-East in the Ministry of Home, Central Government shall, within a period of two weeks, hold a meeting with the Chief Secretary of the State of Meghalaya and other authorities concerned and consider the proposal of the State of Meghalaya. The Tribunal also expressed its disapproval for the conduct of the State in not formulating appropriate policy and guidelines. The Tribunal further  
d observed that the mining in the State cannot be permitted, unless appropriate policy is prepared by the State Government.

e 10. The Tribunal also noticed that there is huge environmental degradation and pollution of the water in the State of Meghalaya and observed that serious steps are required to be taken for cleaning polluted waterbodies, with the above objective the Tribunal authorised the State Government to collect 10% on the market value of the coal in addition to the royalty payable to it. In this regard, the following directions were issued:

f “It is also indisputable that there has been huge environmental degradation and pollution of the waterbodies in the State of Meghalaya, because of this illegal, unscientific mining. No one has even thought of restoration of the area in question, to bring to some extent, if not completely, restoration of ecology and environment in question. Serious steps are required to be taken for cleaning polluted waterbodies and ensure that no further pollution is caused by this activity and the activity which would be permitted to be carried on finally including transportation of coal. On the basis of “polluter pays principle”, we direct that the State  
g Government shall in addition to the royalty payable to it, shall also collect 10% on the market value of the coal for every consignment. Having heard the learned counsel appearing for the parties and keeping in view the Notifications of the Central Government dated 10-5-2012 and that of the State Government dated 22-6-2012, we may notice that in the report of the Comptroller and Auditor General of India for the period ending 31-3-2013  
h under 7.5.18 of Chapter 7 of which the invoice value of the coal has been taken at Rs 4850 per metric tonne.

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Thus, we direct that the State Government shall in addition to the royalty payable to it, also collect 10% of the said market value of the coal per metric tonne from each person. The amount so collected shall be deposited in the account to be titled as “Meghalaya Environment Protection and Restoration Fund” to be maintained by the State under the direct control of the Chief Secretary of the State of Meghalaya.

This amount shall only be used for restoration of environment and for necessary remedial and preventive measures in regard to environment and matters related thereto.”

11. Certain other directions were issued by the Tribunal vide order dated 25-3-2015<sup>3</sup>.

**Order dated 10-5-2016<sup>2</sup>**

12. Order dated 10-5-2016<sup>2</sup> has been challenged by KA Hima Nongstoin Land Owners, Coal Traders and Producers Association. NGT vide its order dated 23-12-2015<sup>10</sup> had permitted transportation of coal for the period till 15-5-2016. By order dated 31-3-2016<sup>11</sup>, NGT refused to further extend the time for transportation and directed that after 15-5-2016 all extracted coal shall vest in the State. Aggrieved against order dated 31-3-2016<sup>11</sup> KA Hima Nongstoin Land Owners, Coal Traders and Producers Association filed CA No. 4793 of 2016 before this Court, which was disposed<sup>12</sup> of by granting liberty to the appellant to file application before NGT. Pursuant to the liberty granted by this Court MA No. 427 of 2016 was filed before NGT. By order dated 10-5-2016<sup>2</sup> applications, MAs Nos. 400 and 427 of 2016 were dismissed. By the same order the State of Meghalaya was directed to place on record the exact current quantity of coal and value thereof including the status of the coal lying and mined anywhere in the State of Meghalaya as on 1-4-2015 and the exact quantity of coal lying as on 16-5-2016. The State was also directed to submit its proposal as to how the State shall deal with the coal that is vested in the State primarily for the reasons that entire coal is illegally extracted coal.

**Order dated 31-8-2018<sup>1</sup>**

13. On 31-8-2018<sup>1</sup>, the Tribunal noticing the earlier proceedings also noted that few issues are pending before this Court arising out of orders passed by

<sup>3</sup> *All Dimasa Students Union v. State of Meghalaya*, 2015 SCC OnLine NGT 697

<sup>2</sup> *All Dimasa Students Union v. State of Meghalaya*, 2016 SCC OnLine NGT 174

<sup>10</sup> *All Dimasa Students Union v. State of Meghalaya*, 2015 SCC OnLine NGT 839

<sup>11</sup> *All Dimasa Students Union v. State of Meghalaya*, 2016 SCC OnLine NGT 422

<sup>12</sup> *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn. v. All Dimasa Students Union*, 2016 SCC OnLine SC 1830

<sup>1</sup> *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241

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a the Tribunal. In para 10 of the order, the following has been noticed: (*Threat to Life Arising Out of Coal case*<sup>1</sup>, SCC OnLine NGT)

“10. At this stage, we may note that the following issues are pending before the Hon’ble Supreme Court arising out of orders passed by this Tribunal:

b (i) Civil Appeal No. 5272 of 2016 titled as *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn. v. All Dimasa Students Union*, wherein the following order was passed on 21-9-2016<sup>13</sup>: (SCC OnLine SC paras 2-3)

c ‘2. Having heard the counsel for the parties, it is directed that the petitioners, as well as the respondents, who have mined the coal, are permitted to transport the coal on payment of royalty and other fees as fixed by the National Green Tribunal (for short “the Tribunal”) and other relevant status. The extracted coal can be transported from 1-10-2016 till 31-5-2017. It is further directed that no other extraction shall take place in the meantime.

d 3. The finding of the tribunal that the coal is vested in the State on the ground that it is illegally extracted coal, shall be adverted to at the time of final hearing. The miners shall keep the accounts and if, ultimately, it is held that the coal belongs to the State, they will refund the amount with interest. The quantum of interest shall be determined at the time of final hearing. Needless to say, these observations have been made without prejudice to the contentions to be raised by the learned counsel for the parties. The tribunal can proceed with regard to the other aspects which are pending before it.’

The above order shows that question whether coal is vested in the State is to be gone into before the Hon’ble Supreme Court.

f Thereafter, on 28-3-2018<sup>14</sup>, by the said order, time for transporting already extracted coal was extended up to 31-5-2018 but it was clear that no further extraction shall be allowed.

(ii) Civil Appeal Diary No. 3067 of 2018 titled as *Lber Laloo v. All Dimasa Students Union*, raising the question whether ban on mining can be continued. We are informed that in the said matter, the issue of mining plan has also been raised.”

g 14. The Tribunal further directed that ban on rat-hole mining shall continue subject to further orders of this Court. Ban on transportation of extracted coal

1 *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241

h 13 *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn. v. All Dimasa Students Union*, 2016 SCC OnLine SC 1831

14 *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn. v. All Dimasa Students Union*, 2018 SCC OnLine SC 3431

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will also continue subject to further orders. Following directions were issued in para 13: (*Threat to Life Arising Out of Coal case*<sup>1</sup>, SCC OnLine NGT)

“13. Accordingly, we direct that orders of ban of rat-hole mining will continue, subject to further orders of the Hon’ble Supreme Court. Ban of transportation of the already mined material will also continue subject to further orders of the Hon’ble Supreme Court. The State of Meghalaya will be the receiver/custodian of the available extracted coal as on date, subject to further orders of the Hon’ble Supreme Court. If any further coal not so far recorded in the inventory is available, a separate inventory may be made and if it is found that the extraction was illegal, royalty in terms of orders already passed may also be collected. This may be determined by the Secretary of Mining of the State of Meghalaya. While one view is that there is extracted coal and not accounted for, the other view put forward is that it is result of illegal mining. This aspect may be gone into by the Secretary of Mining, State of Meghalaya in the first instance. The same be cross-checked by a joint team of representatives of Central Pollution Control Board and Indian School of Mines, Dhanbad.”

15. The Tribunal also deliberated on restoration of the environment and rehabilitation of the victims for which funds were available. The Tribunal constituted a Committee headed by Justice B.P. Katakey, Former Judge of the Gauhati High Court with representatives from Central Pollution Control Board and Indian School of Mines, Dhanbad. Paras 14 to 26 of the order are relevant in this context, which are as follows: (*Threat to Life Arising Out of Coal case*<sup>1</sup>, SCC OnLine NGT)

“14. Only last question which remains is of restoration of the environment and rehabilitation of the victims for which funds are available. We are of the view that for this task, it will be appropriate that we constitute an independent Committee. This Committee will be headed by Justice B.P. Katakey, Former Judge of the Guwahati High Court with representatives from Central Pollution Control Board and Indian School of Mines, Dhanbad.

15. The Committee will take the following steps:

- Take stock of all actions taken so far in this regard.
- Prepare time bound action plan to deal with the issue and ensure its implementation.

16. The Committee may requisition services of such technical experts as may be necessary and may also carry out visits to sites whenever necessary. They will be entitled to all logistic support for performing these functions which shall be provided under the directions of the Chief Secretary, Meghalaya.

17. The Committee may also set up website for receiving and giving information on subject.

<sup>1</sup> *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241

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- a* 18. The Committee may also involve educational institutions for awareness and feedback about results.
19. All authorities concerned in the State of Meghalaya shall cooperate and coordinate with the Committee. The Committee can seek such technical assistance as may be required from any relevant authority.
- b* 20. The Chief Secretary, Meghalaya to provide all facilities to said Committee to perform its functions. The Committee may send its periodical reports to the Tribunal by email at [filing.ngt@gmail.com](mailto:filing.ngt@gmail.com).
21. The Committee may assume its charge within two weeks from today. The Committee may prepare action plan which shall have targets of ensuring compliance. It may meet at such intervals as considered appropriate but twice in every month and fix targets for compliance.
- c* 22. The Committee will be free to take up all incidental issues. The Committee will be free to seek any further directions from this Tribunal by email.
23. The Chief Secretary of the State of Meghalaya may determine remuneration of the Chairman in consultation with him and the Chief Secretary of the State of Meghalaya will also provide all logistic support including security if needed for their proper functioning.
- d* 24. The Committee will be entitled to take the help of the technical experts in execution of this order. The Committee may frame its action plan for implementation within one month from today and implementation may be completed within six months as far as possible. The timelines may be laid down. A copy of the action plan may be sent to this Tribunal by email at [filing.ngt@gmail.com](mailto:filing.ngt@gmail.com). Thereafter, reports may be sent at least once in two months. The Committee may also assess the damage to the environment as well as to the individuals as already suggested in the Report.
- e* 25. The State of Meghalaya will make available all the relevant records to the Committee for the purpose. The State will also determine the remuneration to be paid to the Chairman of the Committee in consultation with him within one month from today.
- f* 26. The Committee will be at liberty to take technical assistance from any quarter which may be facilitated by the State of Meghalaya. The Committee may also supervise any issue arising out of receivership/ custodianship of the already extracted coal, including any environmental issues which any arise out of storage of the extracted material and the steps required to be taken for the purpose.
- g* The Report of the Committee may be furnished to this Tribunal by email at [filing.ngt@gmail.com](mailto:filing.ngt@gmail.com).
- A copy of this order may be sent to all the authorities concerned by email for compliance.
- h* All pending matters will stand disposed of in above terms.  
List for consideration of the Report on 6-3-2019.”

**Order dated 4-1-2019<sup>4</sup>**

16. Justice Katakey Committee submitted its report before the Tribunal on 2-1-2019. The Committee's various proceedings which were part of the report were noticed in detail by NGT. In para 21 of the order the following was noticed: (*Threat to Life Arising Out of Coal Mining in South Garo Hills District case*<sup>4</sup>, SCC OnLine NGT)

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“21. Under issue number D, it was noted that the Meghalaya State Pollution Control Board in its report in September 1997 had noted that unplanned and unscientific coal mining activities were taking place. This had achieved dangerous dimensions in the last two decades creating ecological disturbance and adverse environmental impacts. This showed that though cognizance of the problem was taken in the year 1997, the problem continues even 20 years thereafter. The State Pollution Control Board had, in the year 1997, recommended steps to check illegal mining including generation of awareness, legislative measures, use of technology, carrying out of study but none of the recommendations were implemented even after 21 years.”

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17. The Tribunal after considering the report of the Committee and other materials on record came to the conclusion that the State of Meghalaya had failed to perform its duties to act on the recommendation of the report of the Meghalaya State Pollution Control Board submitted in the year 1997. The Tribunal opined that interim amount be deposited towards restoration of the environment. Paras 31 to 33 are as follows: (*Threat to Life Arising Out of Coal Mining in South Garo Hills District case*<sup>4</sup>, SCC OnLine NGT)

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“31. Paying capacity and the amount which may act as deterrent to prevent further damage is also well recognised. Net Present Value of the ecological services foregone and cost of damage to environment and pristine ecology, the cost of illegal mined material, and the cost of mitigation and restoration are also relevant factors. The Committee may go into these aspects to determine the final figure.

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32. We are satisfied that having regard to the totality of factual situation emerging from the record, damages required to be recovered are not, prima facie, less than Rs 100 crores. Accordingly, by way of an interim measure, we require the State of Meghalaya to deposit Rs 100 crores within two months with CPCB in this regard.

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33. We have already noted the extent of damage found and the value of the illegally mined material, apart from clandestine mining for which sufficient material is not available. The State had collected, as noted in the earlier order, royalty of Rs 400 crores which by now must be higher figure.”

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18. The State of Meghalaya has filed two appeals being CA No. 10720 of 2018 and CA No. 2968 of 2019. CA No. 10720 of 2018 has been filed

<sup>4</sup> *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2019 SCC OnLine NGT 105

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a questioning the order dated 31-8-2018<sup>1</sup> passed by the Tribunal by which the Tribunal directed that order of the ban of rat-hole mining will continue and further constituted Justice B.P. Katakey Committee to take steps for restoration of the environment and rehabilitation of the victims. The other Civil Appeal No. 2968 of 2019 has been filed by the State of Madhya Pradesh questioning the order dated 4-1-2019<sup>4</sup> by which the State of Meghalaya was directed to deposit interim amount of Rs 100 crores towards restoration of the environment.

b 19. Against the same order dated 31-8-2018<sup>1</sup> two other appeals have been filed being CA No. 10611 of 2018 by the State Coordination Committee of Coal Owners, Miners and Dealers Forum and CA No. 10907 of 2018 by Garo Hills Autonomous District Council aggrieved by the perpetual ban of coal mining by order dated 31-8-2018<sup>1</sup> without considering illegality of the ban in the first place. The appellants are also aggrieved by appointment of State  
c Government receiver/custodian of the extracted coal when there is no dispute of the ownership of the coal and further the question of vesting of the coal in the State is pending consideration in this Court in CA No. 5272 of 2016.

d 20. CA No. 10907 of 2018 is filed by Garo Hills Autonomous District Council which is aggrieved by the order of the Tribunal dated 31-8-2018<sup>1</sup> by which it has confirmed the ban on coal mining which was in force for over four years and further direction by the Tribunal to constitute a committee for the disposal of funds in excess of Rs 400 crores. The appellants are aggrieved by the above and alleged that the Tribunal failed to consider that constituting the Committee without considering the roles and responsibilities of the District Council has the effect of virtually excluding the Council from issues concerning  
e administration of forests and lands which are within the exclusive jurisdiction of the Council. The ban on coal mining has effectively closed the doors on a major source of revenue for the functioning of the District Council, which is empowered in terms of the Sixth Schedule of the Constitution to collect taxes.

f 21. CA No. 5272 of 2016 by KA Hima Nongstoin Land Owners, Coal Traders and Producers Association has been filed against the order dated 10-5-2016<sup>2</sup> by which Miscellaneous Applications Nos. 400 and 427 of 2016 were dismissed. The appellants had prayed for modification and clarification and/or recall of the final order dated 31-3-2016<sup>11</sup> by which the Tribunal directed for vesting of the duly assessed already extracted coal with the State of Meghalaya and refusing to extend the time for transportation of the already extracted coal. The appellants claim for propriety rights of its members over such coal, which were mined as per prevailing custom prior to 17-4-2014.

g 22. Now, remains appeal being Civil Appeal of 2019 (arising out of Diary No. 3067 of 2018) filed on behalf of Lber Laloo. The appellant has filed this

1 *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241

4 *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2019 SCC OnLine NGT 105

2 *All Dimasa Students Union v. State of Meghalaya*, 2016 SCC OnLine NGT 174

11 *All Dimasa Students Union v. State of Meghalaya*, 2016 SCC OnLine NGT 422

appeal against the order dated 25-3-2015, aggrieved by the blanket ban on mining activities imposed in the State of Meghalaya by NGT which, according to the appellant, is adversely affecting the lives and livelihood of the miners in the State of Meghalaya. As a result of ban on coal mining, large number of the families are affected in the State of Meghalaya, who are dependent for their livelihood on coal mining.

**Submissions**

23. We have heard Shri Shekhar Naphade, learned Senior Counsel, Shri Amarendra Sharan, learned Senior Counsel, Shri Amit Kumar, Advocate General, for the State of Meghalaya. We also heard Shri Ranjan Mukherjee appearing for the State of Meghalaya. Shri Ranjit Kumar, learned Senior Counsel, appearing for the appellant in CA Diary No. 3067 of 2018 and Shri Raju Ramachandran, learned Senior Counsel, appearing for the appellant in CA No. 10907 of 2018. Shri Colin Gonsalves, learned Senior Counsel has been heard as Amicus Curiae. We have also heard the learned counsel for Respondent 1 in CA No. 5272 of 2016 (who was the applicant before NGT). Shri Nidhesh Gupta, learned Senior Counsel has been heard for the private respondents in CA No. 5272 of 2016. Shri A.N.S. Nadkarni, learned Additional Solicitor General has been heard for the Union of India. We have also heard other learned counsel who were permitted to intervene in the matter and raise various arguments in respect of their different IAs.

24. Shri Shekhar Naphade, learned Senior Counsel led the arguments on behalf of the State of Meghalaya. Shri Naphade submits that jurisdiction of NGT constituted under the National Green Tribunal Act, 2010 is confined to Sections 14, 15 and 16. Section 16 is not attracted in the present case. Section 14 deals with original jurisdiction of NGT and it takes within its compass or all of civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved and such question arises out of the implementation of the enactments specified in Schedule I. The jurisdiction depends upon two conditions which are required to be satisfied cumulatively and they are:

- (1) substantial question which relates to environment, and
- (2) implementation of the enactments specified in Schedule I.

25. It is submitted that the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as “the MMDR Act, 1957”) not being specified in Schedule I, the National Green Tribunal could not have exercised jurisdiction to examine violation of the MMDR Act, 1957. It is submitted that NGT committed error in holding that the coal mining in the State of Meghalaya is unregulated. NGT proceeded on erroneous premise that the tribals of Meghalaya cannot do coal mining without obtaining lease from the State Government. It is submitted that tribals who are owners of the land are also owners of the subsoil and the minerals in the land. The land in the State of Meghalaya was property of men and villages. The Khasi Hills, Jaintia Hills and Garo Hills have different land tenure system of their own, which does not

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a provide for vesting of land or minerals in the State right from pre-Independence period.

26. Shri Naphade submits that the ownership of minerals vests with the owner of the land unless the owner of the land is deprived of the same by some valid process of law, for example, the provision contained in Land Revenue Codes of different States, which categorically state that the ownership of minerals exclusively vests in the State Government. However, in the State of  
b Meghalaya, there exists no such law that deprives the owner of the land from owning the minerals beneath it.

27. Shri Naphade submits that under the MMDR Act, 1957, the State has no legislative or executive power with regard to coal, which is a major mineral. It can neither exercise any jurisdiction of granting any mining lease to the tribals nor has it any jurisdiction to frame any mining policy. It is submitted  
c that the provisions of the MMDR Act deal with lease and prospecting licence. The tribals of Meghalaya are owners of the minerals located in their land. Since they are the owners, there is no question of they being required to obtain either a prospecting licence or a mining lease. The concepts of lease and licence necessarily involve minimum two parties to the transaction—in case of  
d a licence, there has to be a licensor and licensee. The owner of minerals cannot give licence or lease to himself or grant a prospecting licence. The State is not the owner of the minerals and, therefore, it cannot on its own grant prospecting licence or lease as it has no proprietary right in respect of such minerals. The State can neither be a licensor nor a lessor in such situation.

28. Shri Naphade reiterates that the whole premise of NGT that the coal  
e mining in the State of Meghalaya is unregulated is fully erroneous. Referring to north-eastern area under which the State of Meghalaya was established as full-fledged State, it is submitted that administration of tribal areas is to be governed as per the Sixth Schedule of the Constitution of India and various orders passed by NGT directly interfered in the administration of tribal area which is vested in the Autonomous District Councils. It is submitted that NGT  
f failed to consider the relevant statutory matrix including the provisions of the Sixth Schedule and legislation framed by the Autonomous District Councils. It is submitted that NGT has no jurisdiction to constitute any committee for the purpose of enforcing its orders. The constitution of committees including constitution of Justice B.P. Katakey Committee, former Judge of the Gauhati High Court by the impugned order dated 31-8-2018<sup>1</sup> is beyond the jurisdiction of NGT. The constitution of the Committee is interference with the jurisdiction  
g of Autonomous District Council. It is further submitted that NGT has also no jurisdiction to create any fund. The Tribunal by constituting the Committee and by constituting a fund has created a parallel Government. The Tribunal not being a constitutional court it cannot issue a continuous mandamus. It is submitted that the Tribunal although issued several directions to the State

h  
1 *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241

of Meghalaya to frame mining policy whereas the State has no jurisdiction regarding framing of mining policy under the MMDR Act, 1957, the State is denuded with any legislative powers with regard to regulation and development of minerals, which have been declared by the Union to have been taken under its control. Referring to the EIA Notification dated 14-9-2006 issued under the Environment Protection Act, 1986, he submitted that environment clearance for mining was required only when area of mining was more than five hectares. In tribal areas of the State of Meghalaya, mining area consists of small area which being not more than five hectares, there was no requirement of obtaining an environment clearance. He does not dispute that after 15-1-2016 by the EIA notification now the requirement of area of being not more than five hectares having been deleted environment clearance is required as on date with regard to carrying on mining operations. The tribals are dependent for their livelihood on coal mining and, therefore, by complete ban on coal mining with effect from 17-4-2014, large number of tribals are deprived from their livelihood and it is obligatory for the State to espouse the cause of the tribals, who individually were not before NGT. There being no jurisdiction in the State of Meghalaya to grant mining lease as per special nature of land tenure in the tribal areas of the State of Meghalaya and further minerals are not vested in the State of Meghalaya, NGT erred in holding that the State has failed to carry on its obligation and failed to check coal mining in the State of Meghalaya, it is the Central Government which has all jurisdiction and authorities under the 1957 Act to make necessary rules and issue necessary directions and the State alone cannot be blamed. Referring to the Mineral Concession Rules, 1960 framed under Section 13 of the MMDR Act, 1957, it is submitted that even though Rule 13(f) refers to mining application with regard to land of which minerals vest in persons other than the Government, he submits that this provision shall not apply for owner when he himself carries on the mining, the question of taking lease may arise when owner of the land gives land to some other person to mine the minerals.

**29.** Shri Naphade, however, submits that the provisions of the Mines Act, 1952 are applicable and have to be complied with. He referred to the Mineral Conservation and Development Rules, 1988, where cess can be charged by the State.

**30.** Shri Amarendra Sharan, learned Senior Counsel appearing for the State of Meghalaya in CA No. 2968 of 2019 submits that NGT vide the impugned order dated 4-1-2019<sup>4</sup> has directed the State of Meghalaya to deposit Rs 100 crores as an interim measure which is wholly unsustainable. NGT has passed the order dated 4-1-2019<sup>4</sup> relying on first interim report of the Committee headed by Justice B.P. Katakey, former Judge of the Gauhati High Court. The constitution of the Committee was itself beyond the jurisdiction of NGT. Shri Sharan adopts the submissions made by Shri Naphade and in addition to those submissions, submits that the order dated 4-1-2019<sup>4</sup> has been passed in

<sup>4</sup> *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2019 SCC OnLine NGT 105

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a violation of principles of natural justice since no opportunity was given to the State of Meghalaya to respond to the report of the Committee used against it for imposing a penalty of Rs 100 crores. The order impugned has been made by NGT contrary to the findings recorded in the report of the Committee of Justice B.P. Katakey. The impugned order dated 4-1-2019<sup>4</sup> has been passed by NGT without any assessment of damage of environment whatsoever. The Tribunal also did not notice its earlier order dated 25-3-2015<sup>3</sup> wherein penalty has already been imposed on actual polluters i.e. coal miners and transporters based on polluter pays principle for which fund, namely, Meghalaya Environment Protection and Restoration Fund (hereinafter referred to as “MEPRF”) has already been created. NGT passed order dated 4-1-2019<sup>4</sup> without considering the statutory provisions concerned to determine as to who is responsible for implementation of the mining statutes and the environmental legislation in the State of Meghalaya. The State of Meghalaya has limited source of revenue and putting extra burden of Rs 100 crores shall shatter the economy of the State.

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31. Shri Raju Ramachandran, learned Senior Counsel, in support of appellant, Garo Hills Autonomous District Council in Civil Appeal No. 10907 of 2018 submits that NGT while passing order dated 31-8-2018<sup>1</sup> has ignored the Sixth Schedule of the Constitution. By order dated 31-8-2018<sup>1</sup>, NGT could not have constituted the Committee. Referring to the Sixth Schedule of the Constitution, Shri Raju Ramachandran submits that under para 2, District Councils, Regional Councils have been constituted and also Hills District Council is a Council created under the Sixth Schedule of the Constitution framed under Article 244(2) and Article 275(1) of the Constitution of India. The constitution of Committee by NGT has virtually affected District Autonomous Council from issues concerning administration of forests and lands within the exclusive jurisdiction of the Council. The ban of coal mining has deprived the appellant from major source of Revenue. Under Para 8 of the Sixth Schedule, Autonomous District Council is entitled to share the Revenue from minerals royalty collected by the State Government. The impugned order has been passed without hearing and taking note of existence of shareholders or stake of shareholders. Shri Raju Ramachandran further submits that NGT has disposed of OAs Nos. 73, 13 and 186 of 2014 by order dated 31-8-2018<sup>1</sup> after this, it could not have passed any order.

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32. The learned counsel for the appellant in support of CA No. 5272 of 2016 submits that the appeal filed by the appellant is only for seeking protection of the proprietary rights of its members over the coal which was mined as per prevailing custom prior to 17-4-2014. It is submitted that by

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4 *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2019 SCC OnLine NGT 105

3 *All Dimasa Students Union v. State of Meghalaya*, 2015 SCC OnLine NGT 697

1 *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241

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order dated 31-3-2016<sup>11</sup>, NGT had taken the view that all coal after 2016 shall vest in the State. The appellant had previously approached this Court by filing CA No. 4793 of 2016 against the order dated 31-3-2016<sup>11</sup> wherein this Court granted<sup>12</sup> the liberty to the appellant to approach NGT for filing application for clarification of the order. The application of the appellant for clarification was rejected by NGT without giving any reason. NGT had overreached the scope of its jurisdiction and authority in directing for vesting of the coal extracted by the members from their land in the State. It is further submitted that the MMDR Act, 1957 was enacted by Parliament to regulate the mining activities in the country which does not in any manner purport to declare the proprietary rights to the State in the minerals.

**33.** Mr Ranjit Kumar, learned Senior Counsel in support of CA (D) No. 3067 of 2018 submits that the Tribunal committed error in stopping the entire coal mining in the State of Meghalaya. Referring to Section 15 of the NGT Act, 2010, Shri Ranjit Kumar submits that relief, compensation and restitution can be granted as provided in Section 15. It is submitted that by stopping entire coal mining from 17-4-2014 the livelihood of the appellant and several similarly situated persons had been adversely affected. It is submitted that the Tribunal ought to have lifted the ban. The order impugned infringes right under Article 21 of the Constitution of India. The Tribunal has acted beyond its power under Section 15 of the NGT Act, 2010. The finding of the Tribunal on mining that in the State of Meghalaya mining is unregulated is not correct, whereas, a miner is required to get registered and it has to pay royalty fixed by the State of Meghalaya.

**34.** Shri Ranjan Mukherjee, learned counsel appearing for Respondent 2, State of Meghalaya in CA No. 3067(D) of 2019 submits that even if rat-hole mining has been banned, all mining cannot be banned. He submits that the Meghalaya Mines and Minerals Policy, 2012 has been formulated with an aim to facilitate systematic, scientific and planned utilisation of mineral resources and to streamline mineral based development of the State. The State of Meghalaya has been created to follow the customary rights and practices of coal mining in the tribal areas of Meghalaya. In this regard Letter of the Central Government dated 2-7-1987 has also been relied. The draft guidelines for coal mining activities in the State have also been framed in the year 2015. Although, NGT has directed the Ministry of Environment and Forests to look into the matter but no objection has been communicated to the State except certain minor discrepancies.

**35.** Shri A.S. Nadkarni, learned Additional Solicitor General appearing for the Union of India submits that the provisions of the MMDR Act, 1957 are also applicable in the tribal areas of the State of Meghalaya. The request submitted

<sup>11</sup> *All Dimasa Students Union v. State of Meghalaya*, 2016 SCC OnLine NGT 422

<sup>12</sup> *KA Hima Nongstoin Land Owners, Coal Traders and Producers Assn. v. All Dimasa Students Union*, 2016 SCC OnLine SC 1830

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- a by the Government of Meghalaya for issuance of presidential notification under Para 12-A(b) of the Sixth Schedule of the Constitution of India for exempting the State of Meghalaya from certain provisions of the MMDR Act, 1957 has not been acceded to. The Office Memorandum dated 12-3-2019 issued by the Government of India, Ministry of Coal has been referred to and relied on by the learned Additional Solicitor General in this regard. It is submitted that no prior approval for mining rights in respect of area containing coal has been given
- b under the MMDR Act, 1957 by the Ministry of Coal, Government of India for the State of Meghalaya.

- c **36.** It is submitted that it is entirely impermissible for the appellant or any other private person to claim any rights for illegal or unlawful mining of coal in derogation of the law in force in the State of Meghalaya. It is further submitted that generation of revenue would not be a ground for claiming permission to carry out mining in contravention/derogation of the law in force. A draft guideline submitted by the State Government of Meghalaya by Letter dated 24-9-2015 was examined by the Ministry of Coal, Government of India on which decision was taken that the guidelines submitted by the Government of Meghalaya were not in conformity with the existing statutory provisions of the MMDR Act, 1957. Hence, the State of Meghalaya may reframe the
- d guidelines in conformity with the MMDR Act, 1957 and submit. In the revised proposal dated 25-7-2016 the State of Meghalaya had proposed certain amendments in the MMDR Act, 1957 and exemption from the application of the MMDR Act, 1957 through a presidential notification under Para 12-A(b) of the Sixth Schedule. It had already been communicated by the Central Government that exemption from applicability of the MMDR Act, 1957 cannot
- e be acceded to.

- f **37.** Shri Colin Gonsalves, learned Senior Counsel, appearing as Amicus Curiae, has raised various submissions. The learned Amicus Curiae has submitted a report in two volumes titled “CURSE OF UNREGULATED COAL MINING IN MEGHALAYA”, a Citizen’s Report from Meghalaya, 1-12-2018. In Vol. I under the head “Introduction” the Report states:

*“Introduction*

- g Meghalaya has a resource curse. Although, we have been endowed with abundant forests and minerals, these resources have not contributed to the good of our society, because they have been extracted without any regulation or concern for the larger common good. This unregulated, narrow, self-interest based use of natural resources has exacerbated socio-economic inequality, destroyed the environment, heightened criminality, and torn as under our egalitarian tribal social fabric.

- h It also violates Section 39(b) of the Constitution which provides that the ownership and control of the material resources of the community should be so distributed so as to best subserve the common good and, therefore, the State cannot distribute the material resource of the community in any way it likes. The process of distribution must be guided

by the constitutional principles including the doctrine of equality and larger public good.

The National Green Tribunal's landmark order regarding unregulated and illegal coal mining in our State therefore came as a wake-up call for Meghalaya society at large. This order has been criticised and appealed against by a small section of locals most of who are coalmine owners, transporters, politicians and administrators who have 'illegally' benefited out of this unregulated mining and who want things to get back to business as usual. Coal miners and politicians who are miners, truck owners, weighbridge operators, etc. have filed appeals with the Honourable Supreme Court, asking the Hon'ble Court to rescind NGT orders so that mining can once again begin."

**38.** The learned Amicus Curiae submits that the State of Meghalaya still continues with the illegal mining. Shri Gonsalves submits that Section 4 of the MMDR Act, 1957 by use of words "no person" clearly prohibits mining operation without obtaining mining lease in accordance with the Act. Referring to Section 5, he submits that for Schedule A minerals, permission of the Central Government is required which has not been obtained. Shri Gonsalves submits that for mining, the leases are required and permission be sought. He submits that there are 53 mines per kilometre in tribal areas of Meghalaya. He submits that all extracted coal which is claimed to be lying assessed or unassessed in the State of Meghalaya is result of illegal mining and Coal India Ltd. be directed to take over the entire coal.

**39.** Shri Gonsalves has also referred to various reports of the Comptroller and Auditor General of India which has been brought on record in Vol. II—A Citizen's Report from Meghalaya, 6-1-2019.

**40.** Shri Nidhesh Gupta, learned Senior Counsel, appearing on behalf of the private respondent in Civil Appeal No. 5272 of 2016 has refuted the submissions raised by the learned counsel for the appellants. Shri Nidhesh Gupta submits that as per List I Entry 54 regulation of mines and minerals development has been declared by Parliament under the MMDR Act, 1957. Section 2, by declaration as contained in the MMDR Act, 1957, the State Government is denuded of all legislative and executive powers under List II Entry 23 read with Article 162 of the Constitution of India. Section 4 sub-section (1) makes it clear that no person can undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence. As per Section 5 sub-section (1) a State Government shall not grant a reconnaissance permit, prospecting licence or mining lease to any person unless such person is an Indian national and satisfies such conditions as may be prescribed. The proviso to Section 5(1) provides that in respect of any mineral specified in Part A and Part B of the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Central Government. The contention on behalf of the State of

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*a* Meghalaya that the MMDR Act, 1957 does not apply to the State of Meghalaya is based on an erroneous reading of the statutory provisions.

*b* **41.** Section 13 empowers the Central Government to make rules for regulating the grant of reconnaissance permits, prospecting licences and mining leases in respect of land in which minerals vest in the Government and also in respect of any land in which the minerals vest in a person other than the Government. In exercise of powers under Section 13 of the Act, the Mineral Concession Rules, 1960 have been framed.

*c* **42.** Chapter V deals with the procedure for obtaining a prospecting licence or a mining lease in respect of a land in which the minerals vest in a person other than the Government. The said Chapter contains provisions from Rule 41 to Rule 52. Rule 41 stipulates that the provisions of the said Chapter apply only to the grant of prospecting licences and mining leases in respect of land in which minerals vest exclusively in a person other than the Government. Therefore, mining leases in respect of land where minerals vest in a person other than the Government are covered by the said Chapter and matters concerning grant of prospecting licences and mining leases are detailed therein.

*d* **43.** As per Section 23-C, the State Government is empowered to make Rules for preventing illegal mining, transportation and storage of minerals. No Rules have been framed by the State of Meghalaya under Section 23-C. The contention on behalf of the State of Meghalaya that the MMDR Act applies only in the cases where minerals vest in the Government, therefore, the MMDR Act does not apply in the State of Meghalaya, is completely misconceived.

*e* **44.** The learned counsel also relies on the stand taken by the Union of India in the status report dated 24-7-2018. Shri Gupta submits that approximate price of coal is Rs 10,000 per metric ton. Referring to notice inviting tenders by the State of Meghalaya, it is submitted that amount of Rs 1000 per metric ton was contemplated. It is submitted that selling the coal on much low price is causing loss to the Revenue as well as loss to other stakeholders. The allegations have been by Shri Gupta that sale of coal at such low price raises suspicion of underhand dealing. It is submitted that legal position be laid down by this Court and the orders of NGT be upheld.

*f* **45.** In addition to the above, we have also heard several learned counsel who have filed IA for impleadment and IAs for direction including direction to transport coal belonging to them. We have heard Shri Sidharth Luthra, Shri R. Basant, Smt Meenakshi Arora, Senior Advocates and other learned counsel.

*g* **46.** On 10-5-2019<sup>15</sup>, we had passed an order permitting transportation of coal to the extent of 75,050 MT which was balance quantity from 1,76,655 MT of coal, for transportation of which this Court had passed order on 4-12-2018<sup>16</sup>. The order dated 10-5-2019<sup>15</sup> permitted transportation of the coal, for which transport challans had already been issued after 4-12-2018<sup>16</sup> under the terms

*h* <sup>15</sup> *Lber Laloo v. All Dimasa Students Union*, (2019) 16 SCC 317 : 2019 SCC OnLine SC 698

<sup>16</sup> *Lber Laloo v. All Dimasa Students Union*, 2018 SCC OnLine SC 3330

and conditions as indicated in the order dated 10-5-2019<sup>15</sup>. In the order dated 10-5-2019<sup>15</sup>, we had also held that applicants need not be impleaded, however, they were permitted to intervene in the matter.

**47.** The counsel appearing for different applicants claim transportation of different quantity of coal which according to them has now been assessed. Still some of the applicants claim transportation of the coal which is yet to be assessed. In different applications, different quantities are claimed to be transported which according to the applicant is lying in different districts of the State of Meghalaya. IA No. 22981 of 2019 and IA No. 22991 of 2019 are applications by an applicant claiming to be auction-purchaser. The learned counsel submitted that he was declared highest bidder, he pleaded for extension of time to deposit the amount but after the order dated 15-1-2019<sup>17</sup>, he was not permitted to transport the coal nor could he deposit the balance auction money.

**48.** Shri Ranjan Mukherjee, learned counsel appearing for the State of Meghalaya has filed an additional affidavit of the Commissioner and Secretary to the Government of Meghalaya, Mining and Geology Department dated 6-4-2019. In the affidavit, it is stated that in pursuance of the order of NGT dated 31-8-2018<sup>1</sup>, the State Government vide Notification dated 14-9-2018 has constituted a team to assist the Commissioner and Secretary to deal with the directives given in para 13 of the order of NGT. It is submitted that in pursuance of the Order of the State Government dated 14-9-2018, the members of the Committee have carried out assessment of unassessed extracted coal appearing in the datasheet of inventory in different Hills District. The report dated 4-10-2018 of the Deputy Commissioner, West Khasi Hills, is filed as Annexure A-3, containing the statement of unassessed extracted coal has been brought on record. Another reports dated 22-10-2018 and 16-11-2018 of West Khasi Hills District containing the statement of assessment of unassessed extracted coal have been brought on record. By report dated 12-11-2018 of the Deputy Commissioner, South-West Khasi Hills, datasheet of coal inventory has been brought on the record. The Report dated 30-10-2018, Deputy Commissioner, South Garo Hills, has also been brought on record. There were reports referring to different assessments carried out by the Committee according to the affidavit which has been filed on behalf of the Commissioner and Secretary to the Government of Meghalaya, the total quantity of coal stock which has now been assessed in different reports stands at 32,56,715 MT.

**49.** It is further submitted by the learned counsel for the State of Meghalaya that above assessment of coal has been also verified by Technical Committees appointed by the State of Meghalaya. Certain reports of Technical Committees have also been brought on the record along with the affidavit.

<sup>15</sup> *Lber Laloo v. All Dimasa Students Union*, (2019) 16 SCC 317 : 2019 SCC OnLine SC 698

<sup>17</sup> *Lber Laloo v. All Dimasa Students Union*, 2019 SCC OnLine SC 744

<sup>1</sup> *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241

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**50.** Shri Colin Gonsalves, learned Amicus Curiae has challenged the assessment made by the committees appointed by the State Government as well as verification by Technical Committee report. It is submitted by Shri Gonsalves that report of Technical Committee wants to undo what has been done in the proceedings before the Tribunal and this Court. The learned Amicus Curiae submits that for transportation, five extensions were granted by NGT and four extensions were granted by this Court. Shri Gonsalves referred to Katakya Committee Report in support of his submissions.

**51.** Shri Nidhesh Gupta, learned Senior Counsel, has also refuted the claim of the different applicants as well as the steps taken by the State of Meghalaya in assessing the coal and verifying the same by Technical Committee. Shri Gupta submits that the coal which is now claimed to be assessed is nothing but illegally extracted coal. It is submitted that in pursuance of several orders passed by NGT and this Court substantial transportation of coal has been permitted, still the enormous quantity of coal is claimed which is nothing but an excuse to obtain an order of transportation of such illegally mined coal. It is submitted that the State of Meghalaya is hand in glove with illegal miners. Shri Gupta submits that the cost of winning coal by rat-hole mining is negligible and after payment of royalty of Rs 675 and Rs 485 towards Meghalaya Environment Protection and Restoration Fund i.e. total payment of Rs 1160, the coal is transported. The market price of the coal is approximately Rs 10,000 per metric ton. The claim of different applicants with regard to unassessed coal is false. It is submitted that all illegally mined coal should be vested in the State and no permission of transport as prayed by the different applicants be granted by this Court. The learned Senior Advocate submits that all applications praying for different directions deserve to be rejected.

**52.** The learned counsel for the parties in support of their respective submissions have placed reliance on various judgments of this Court which shall be referred to while considering the submissions of the parties.

*Points for consideration*

**53.** From the submissions of the parties as noted above and the materials on record in these appeals, the following points arise for consideration.

**53.1.** (1) Whether orders passed by the National Green Tribunal are without jurisdiction being beyond the purview of Sections 14, 15 and 16 of the National Green Tribunal Act, 2010?

**53.2.** (2) Whether provisions of the Mines and Minerals (Development and Regulation) Act, 1957 are applicable in tribal areas within the State of Meghalaya, included in the Sixth Schedule of the Constitution?

**53.3.** (3) Whether for mining the minerals from privately owned/ community owned land in Hills Districts of Meghalaya, obtaining a mining lease is a statutory requirement under the MMDR Act, 1957 and the Mineral Concession Rules, 1960?

h

**53.4.** (4) Whether under the MMDR Act, 1957 and the Mineral Concession Rules, 1960, it is the State Government, who is to grant lease for mining of minerals in privately owned/community owned land or it is the owner of the minerals, who is to grant lease for carrying out mining operations? a

**53.5.** (5) Whether the State of Meghalaya has any statutory control over the mining of coal from privately owned/community owned land in Hills Districts of the State of Meghalaya?

**53.6.** (6) Whether the power to allot land for mining purposes is vested in Autonomous District Councils? b

**53.7.** (7) Whether the order of the National Green Tribunal dated 17-4-2014<sup>6</sup> directing for complete ban on mining is unsustainable?

**53.8.** (8) Whether the complete ban on mining of coal in the State of Meghalaya as directed by NGT deserved to be vacated/modified in the interest of the State and tribals? c

**53.9.** (9) Whether NGT had any jurisdiction to constitute committees to submit reports, to implement the orders of NGT, to monitor storage/transportation; of minerals and to prepare action plan for restoration of environment?

**53.10.** (10) Whether NGT committed error in directing for constitution of fund, namely, Meghalaya Environment Protection and Restoration Fund? d

**53.11.** (11) Whether NGT by constituting committees has delegated essential judicial powers to the committees and has further encroached the constitutional scheme of administration of tribal areas under Article 244(2) and Article 275(1) and Schedule VI of the Constitution?

**53.12.** (12) Whether direction to deposit Rs 100 crores by the State of Meghalaya by order dated 4-1-2019<sup>4</sup> of NGT impugned in CA No. 2968 of 2019 is sustainable? e

**53.13.** (13) Whether NGT's order dated 31-3-2016<sup>11</sup> that after 15-5-2016 all remaining coal shall vest in the State of Meghalaya is sustainable?

**53.14.** (14) Whether assessed and unassessed coal which has already been extracted and lying in different districts of Meghalaya be permitted to be transported and what mechanism be adopted for disposal of such coal? f

**54.** Now we proceed to consider the above points in seriatim.

**Point 1**

**55.** The State of Meghalaya submits that NGT while imposing ban on mining and by forming committee and creating a "Meghalaya Environment Protection and Restoration Fund" has gone beyond its jurisdiction as conferred g

<sup>6</sup> *All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307

<sup>4</sup> *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2019 SCC OnLine NGT 105 h

<sup>11</sup> *All Dimasa Students Union v. State of Meghalaya*, 2016 SCC OnLine NGT 422

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a on it by the NGT Act, 2010. The Tribunal has no inherent jurisdiction, its jurisdiction flows from Sections 14, 15 and 16 of the Act.

b **56.** It is relevant to notice few provisions of the NGT Act, 2010 to comprehend the jurisdiction vested with the Tribunal. The National Green Tribunal Act, 2010 was enacted to provide for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. Section 2 is definitions. Section 2(c) defines “environment” in the following manner:

c **“2. (c) “environment”** includes water, air and land and the inter-relationship, which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property;”

**57.** Section 2(m) defines “substantial question relating to environment”, which is to the following effect:

d **“2. (m) “substantial question relating to environment”** shall include an instance where—

(i) there is a direct violation of a specific statutory environmental obligation by a person by which—

(A) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or

e (B) the gravity of damage to the environment or property is substantial; or

(C) the damage to public health is broadly measurable;

(ii) the environmental consequences relate to a specific activity or a point source of pollution;”

f **58.** Chapter III of the Act deals with jurisdiction, powers and proceedings of the Tribunal. Sections 14 and 15, which are relevant in the present case, are as follows:

g **“14. Tribunal to settle disputes.**—(1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.

1. Ins. by Act 7 of 2017, S. 182 (w.e.f. 26-5-2017).

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

h (3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

**15. Relief, compensation and restitution.**—(1) The Tribunal may, by an order, provide—

(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);

(b) for restitution of property damaged;

(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.

(2) The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).

(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.

(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.”

**59.** The submission which has been pressed by the State is that neither the MMDR Act, 1957 nor the Mines Act, 1952 is prescribed in Schedule I of the Act, hence, coal mining is not within the purview of Schedule I and not within the jurisdiction of the Tribunal. The submission further is that for applicability of Section 14 both the components of sub-section (1) of Section 14 that (i) a substantial question relating to environment, and (ii) such question arises out of the implementation of the enactments specified in Schedule I, have to be satisfied.

**60.** It is relevant to notice that before NGT no such plea was taken by the State of Meghalaya or any of the parties questioning the jurisdiction of NGT. However, the issue being a jurisdictional issue, we have permitted the learned counsel for the appellant to raise the issue. NGT took cognizance when

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*a* application, OA No. 73 of 2014 on 17-4-2014<sup>6</sup> was admitted and order was issued. The jurisdiction of the Tribunal to entertain OA No. 73 of 2014 has to be found out from the case set up and pleadings in OA No. 73 of 2014 for which we need to scrutinise the application. OA No. 73 of 2014 has been brought on record as Annexure A-3 in CA No. 5272 of 2016. The application was filed by one All Dimasa Students Union Dima Hasao District Committee. In the application, the following were the respondents:

- b*
1. The State of Meghalaya through the Principal Secretary, Forest and Environment Department, Government of Meghalaya, Shillong.
  2. The Chairperson, State Pollution Control Board, Meghalaya, Shillong.
- c*
3. The State of Assam through the Principal Secretary, Forest and Environment Department, Government of Assam, Dispur.
  4. The Chairperson, State Pollution Control Board, Assam, Dispur.
  5. The Central Pollution Control Board, Parvesh Bhawan, East Arjun Nagar, Delhi 110 032 through its Chairperson.
- d*
6. North-Eastern Electric Power Corporation Ltd. through its Chairman and Managing Director, Brooklyn Compound, Lower New Colony, Shillong 793 003, Meghalaya.

**61.** Para 3 of the application states the case of the applicant and facts in brief. Paras 3 and (I) to (IV) are as follows:

*e* “3. The applicant above named begs to present the present application to bring to the notice of this Hon’ble Tribunal about the adverse impact of unscientific opencast mining operations being still undertaken in the Jaintia Hills in Meghalaya on the ecology and socio-economy of the area concerned including Dima Hasao District of Assam. It is stated that the acid mine drainage (for short “AMD”) generated from the aforesaid mining operations has resulted in making the water of River Kopili (an inter-State river flowing through the State of Meghalaya and Assam) and its tributaries highly acidic which in turn has not only caused serious far-reaching damage to the environment, water bodies, soil, agriculture, economy and industry of the area concerned but also resulted in causing erosion/corrosion of the critical underwater hydro power equipments of the Kopili Hydroelectric Project (for short “KHEP”) of North-Eastern Electric Power Corporation Ltd. (for short “NEEPCO”) situated in Umrongso, Dima Hasao, District of Assam inasmuch as the said acidic water is ultimately led to the reservoirs of the said project.

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*Facts in brief*

*h* I. That the applicant is the Secretary of Dima Hasao Students Association and filing the present petition in a representative capacity to

<sup>6</sup> *All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307

espouse the cause of the people of Dima Hasao, Assam who are constantly and continuously facing the adverse effect of the aforesaid illegal activities in the State of Meghalaya.

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II. That Kopili River is an inter-State river in North-East India that flows through the States of Meghalaya and Assam and is the largest south bank tributary of River Brahmaputra in Assam, the Kopili River originates from the black mountains of Lum Bah-bo Bah-Kong in Meghalaya and flows north-west into the Brahmaputra Valley in Assam. The said river demarcates the Jaintia Hills in Meghalaya and Dirria Hasao in Assam. The river flows for a total length of 290 km and has a catchment area of 16, 420 km.

b

III. That the Kopili Hydroelectric Project (KHEP) of NEEPCO (a Government of India undertaking) is one of the pioneering hydroelectric project in the North-Eastern region of India. The Kopili hydroelectric plant is a 275 MW storage type hydroelectric plant consisting of two dams which have created two reservoirs, namely, Kopili reservoir is used in the Khandong powerhouse through a 2759 m tunnel to generate power. The tail water from this powerhouse is led to Umrong Reservoir is used in Kopili powerhouse through a 5473 m tunnel to generate power. Although, the dam, powerhouse and residential colony of Kopili Hydro Electric Plant (KHEP) are located in the Dima Hasao District (formerly known as North Cachar Hills District) of Assam, the catchment and reservoirs are spread in two States, namely, Meghalaya and Assam. It is further stated that Kopili River and its tributaries feed water to the reservoirs of the project. Kharkor is a major tributary of River Kopili and drains a vast area of Jaintia Hills Districts of Meghalaya. The Jaintia Hills being well known for coal mining areas are contributing acidic water in the form of acid mine drainage (AMD) to River Kharkor through its different tributaries such as Urn Pai, Myntriang, Urn Ropang, Sarbang, Mostem, etc. as these streams drain through the active and inactive coal mining areas of Jaintia Hills. The acidic water finally reaches to Khandong and Umrong reservoirs of KHEP. As a result, the water of the reservoirs has become highly acidic. The water pollution in streams of catchment area varies from brownish to reddish orange. The same polluted water through various tributaries of Rivers Kharkor and Kopili is perpetually reaching to the reservoirs of KHEP. As a result, the water of reservoirs has become highly acidic. In recent years, it has been found that acidity of reservoir water is a major threat to equipments and machinery due to corrosion/metal decay and erosion. Components such as cooling water header pipe, bends, throttling valves, pressure equaliser pipe of turbine, etc. made up of different metals and alloys are getting severely affected and incurring high maintenance cost.

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IV. That the said adverse impact of the aforesaid mining operation which has not only affected the ecology and socio-economy of the area but also severely affected the generation of hydro-electricity at the Kopili Hydroelectric Plant has been subject-matter of various studies. In fact,

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a a detailed project report of pilot project for remediation of acid mine drainage (AMD) in the catchment of Kopili River at the upstream of Kopili Hydro Electric Plant (KHEP), Umrongso, Dima Hasao, Assam was done by Dr O.P. Singh, Professor, Department of Environmental Studies, North-Eastern Hills University, Shillong, Meghalaya. Similarly, a detailed article based on detailed investigation by Shri Pankaj Sharma and others was published under the heading “Acid Mine Discharge—Challenges Met in a Hydro Power Project” in *International Journal of Environmental Sciences*, Vol. I, No. 6, 2011. Both the aforesaid publications give an in-depth analysis of the aforesaid problem as well as suggest remedial measures to improve the situation. However, it is stated that no proper and effective remedial measures have been taken by the authorities concerned/State respondents to abort the aforesaid menace and the ill effects of the same are still continuing and the same are being constantly faced by the innocent citizens/waterbodies, etc. of the area including the people of Dima Hasao District of Assam. Copies of the detailed project report of pilot project for remediation of acid mine drainage (AMD) in the catchment of Kopili River at the upstream of Kopili Hydro Electric Plant (KHEP), Umrongso, Dima Hasao, Assam and the article published under the heading “Acid Mine Discharge—Challenges Met in a Hydro Power Project” in *International Journal of Environmental Sciences*, Vol. I, No. 6, 2011 are annexed herewith and marked as *Annexures P-1 and P-2* respectively. The ill effect of the aforesaid operations has also been the subject-matter of news items in various newspapers including one published by *The Assam Tribune* on 20-6-2012 under the heading “Concern Over Contamination of Kopili Water” and another one published in *The Telegraph* on 20-6-2013 under the heading “Two Kopili Power Units Shut Down—Mining in Jaintia Hills Affects Machines”. Copies of the news items published in *The Assam Tribune* dated 20-6-2012 and *The Telegraph* dated 20-6-2013 are annexed herewith and marked as *Annexures P-3 and P-4* respectively.”

f 62. In Para 3(V) the appellant has extracted a report of one Dr O.P. Singh, Professor, North-Eastern Hills University, Shillong, Meghalaya. Certain paragraphs of the report stated that acid mine drainage (AMD) is the greatest environmental problem of coal industry and main source of water pollution in and around mining areas. The report mentioned that AMD degrades the water quality of the area in terms of lowering the pH of the surrounding water resources and increasing the level of total suspended solids, total dissolved solids and some heavy metals. Following is the part of Para 4.1.4 of the Report which is extracted in Para 3(V):

“4.1.4. *Impact of AMD on Environment, Socio-economy and Industry*

h *Impact on environment and water resources*—acid mine drainage is the greatest environmental problem of coal mining industry and main source of water pollution in and around mining areas. The influx of untreated AMD into streams severely degrades both water quality and aquatic habitat

turning water unfit for desired uses and often producing an environment devoid of most aquatic life. AMD degrades the water quality of the area in terms of lowering the pH of the surrounding water resources and increasing the level of total suspended solids, total dissolved solids and some heavy metals. Acidity and high concentration of  $\text{SO}_4^{2-}$ ; iron and other metals prove to be toxic and corrosive to most aquatic animals and plants. Precipitate of iron hydroxide increases the load of suspended solids which impair light penetration and visibility resulting into low productivity and disruption of normal functioning of the contaminated aquatic ecosystem. AMD can also be toxic to vegetation when discharged to the shallow soil water zones and wetlands (Van Green et al., 1999; Singh and Agrawal, 2004; Gosh, 1991).

Aquatic communities of rivers and streams comprise of phytoplankton, periphyton, macrophytes, zooplankton, invertebrates and vertebrate species. They play important role in normal functioning of the aquatic ecosystem and are indicative of good health of water bodies. Generally, a variety of species with representatives of almost all insect orders, including a high diversity of insects belonging to the taxonomic orders of Ephemeroptera (mayflies), Plecoptera (stoneflies), and Trichoptera (caddisflies) commonly referred to as EPT taxa. Any physical, chemical or biological change in water bodies affects one or all species and disturbs the normal functioning of the aquatic ecosystem. Like many other pollutants, AMID contamination causes a reduction in the diversity and total numbers, or abundance, of these aquatic communities including benthic macroinvertebrates, fishes, etc. As a result, the community structure is altered and water bodies affected by AMD possess a lower percentage of EPT taxa (Campbell et al., 2000). Moderate AMD contamination eliminates the more sensitive species whereas severely contaminated conditions are characterised by dominance of certain taxonomic representatives of pollution tolerant organisms.

As a consequence of depletion of aquatic invertebrates, the fishes do not get adequate supply of food and suffer indirectly from AMD contamination. AMD also has direct effect on fish by causing various physiological disturbances. However, the primary cause of fish death in acid waters is loss of sodium ions from the blood. Less availability of oxygen to the cells and tissues leads to anoxia and death as acid water increases the permeability of fish gills to water, adversely affecting the gill function. Severe anoxia occurs below pH 4.2. Low pH that is not directly lethal may adversely affect fish growth rates and reproduction.”

**63.** Further, Para 4.2.3 of the Report dealt with coal mining in Jaintia Hills and Para 4.2.4 dealt with impact of coal mining in Jaintia Hills and Para 4.2.5 dealt with degradation of water quality due to coal mining. Paras 4.2.3, 4.2.4, 4.2.5 and 4.2.6 which were extracted in OA No. 73 of 2014 are produced as below:

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“4.2.3. *Coal mining in Jaintia Hills*

- a* Extraction of coal has been taking place in all three regions, however, major production occurs in Jaintia Hills. The mining activity in Jaintia Hills is a small-scale venture controlled by individuals who own the land. Primitive mining method commonly known as “rat-hole” mining is in practice in Meghalaya. In this method the land is first cleared by cutting and removing the ground vegetation and then digging pits ranging from 5 to 100
- b* m<sup>2</sup> into the ground to reach the coal seam. Thereafter, tunnels are made into the seam sideways to extract the coal which is brought into the pit by using a conical basket or a wheelbarrow manually. Coal seams are reached by excavating the side edge of the hill slopes and then coal is extracted through a horizontal tunnel. The coal from the tunnel or pit is taken out and dumped on nearby un-mined area, from where it is carried to the larger dumping
- c* places near highways for its trade and transportation. Finally, the coal is carried by trucks to the larger dumping places near highways for its trade and transportation. Entire roadsides in and around mining areas are used for piling of coal which is a major source of air, water and soil pollution. Off-road movement of trucks and other vehicles in the area causes further damage to the ecology of the area.

- d* Every year new areas are brought under mining and area under coal mining in Jaintia Hills is increasing day-by-day as shown in Figures 4, 5.

4.2.4. *Impact of coal mining in Jaintia Hills and beyond*

- e* Mining operation, undoubtedly has brought wealth and employment opportunity in the area, but simultaneously has led to extensive environmental degradation and erosion of traditional values in the society. Environmental problems associated with mining have been felt severely because of the region’s fragile ecosystems and richness of biological and cultural diversity. The indiscriminate and unscientific mining and absence of post-mining treatment and management of mined areas are making the fragile ecosystems more vulnerable to environmental degradation and
- f* leading to large-scale land cover/land use changes. The current modus operandi of surface mining in the area generates huge quantity of mine spoil or overburden (consolidated and unconsolidated materials overlying the coal seam) in the form of gravels, rocks, sand, soil, etc. which are dumped over a large area adjacent to the mine pits. The dumping of overburden and coal destroys the surrounding vegetation and leads to severe soil and
- g* water pollution. Large-scale denudation of forest cover, scarcity of water, pollution of air, water and soil, and degradation of agricultural lands are some of the conspicuous environmental implications of coal mining in Jaintia Hills. Further, entire coal mining area of the Jaintia Hills has become full of mine pits and caves. These open, unfilled pits are the places where surface water percolates and disappears. As a result, smaller streams and
- h* rivers of the area, which served as lifelines for the people, are either completely disappearing from the face of the earth or becoming seasonal

instead. Consequently, the area is facing acute shortage of clean drinking and irrigation water. Besides, a vast area has become physically disfigured due to haphazard dumping of overburden and mined coal, and caving in of the ground and subsidence of land. a

Continuous discharge of acid mine drainage (AMD) and toxic chemicals from coal mines, storage sites and exposed overburden have polluted the river system of the area. Acidic water on reaching to land and agricultural fields has affected the traditional agriculture and agricultural productivity of the area (Das Gupta et al, 2002; Swer and Singh, 2004) b

#### 4.2.5. Degradation of water quality due to coal mining

The water bodies of the area are the greatest victims of the coal mining. The water bodies are badly affected by contamination of acid mines drainage (AMD) originating from mines and spoils, leaching of heavy metals, organic enrichment and silting by coal and sand particles. Pollution of the water is evidenced by the colour of the water which in most of the rivers and streams in the mining area varies from brownish to reddish orange. Low pH (between 2-3), high conductivity, high concentration of sulphate, iron and toxic heavy metals, low dissolved oxygen (DO) and high BOD are some of the physico-chemical and biological parameters which characterise the degradation of water quality. Analysis of physico-chemical and biological parameters of water in the mining area shows severe degradation of water quality. c

The colour of the water in mining area generally varies from brownish to reddish orange. Siltation of coal particles, sand, soil, etc. and contamination of AMD and formation of iron hydroxide are some of the major causes of change in water colour. Formation of iron hydroxides [Fe (OH)<sub>3</sub>] is mainly responsible for orange or red colour of water in the mining areas. Iron hydroxide is a yellowish insoluble material commonly formed in water bodies of the coalfields. It is this material that stains streams and responsible for red to orange colour of water. When elevated levels of iron are introduced into natural waters, the iron is oxidised and hydrolysed, thereby forming precipitate of iron hydroxides. d

The water in coal mining areas has been found highly acidic. The pH of streams and rivers varies between 2.31 to 4.01. Solids such as fine particles of coal, sand, mud and other mineral particles were found deposited at the bottom of the water bodies. Besides, water was also found turbid and coloured due to suspended precipitates of iron hydroxides. Dissolved oxygen was found to be low in water bodies of coal mining areas, the lowest being 4.24 mg/L in River Rawaka and stream Metyngka of Rymbai. e

The waters of the mining areas have been found containing sulphate concentration between 78 to 168 mg/l. Electrical conductivity is a rapid measure of the total dissolved solids present in ionic form. Water in coal mining areas was found having high conductivity. Deposition of silt at the bottom of the rivers and streams is another important problem in coal f

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a mining areas. Water bodies of the mining area appear to contain various types of organic matter which is evident by low dissolved oxygen (DO) and high biochemical oxygen demand (BOD).

b As a result, the rivers, streams and springs which had supported extremely rich biodiversity and traditional agriculture, and were source of potable and irrigation water in the area have become unfit for human consumption. Further, there is an overall decline in agricultural productivity due to contamination of soil with coal particles, seepage of acid mines drainage and scarcity of water. The water of many rivers and streams has almost become devoid of aquatic life.

4.2.6. *Causes of deterioration of water quality*

c Major causes of deterioration of water quality, as evidenced by above observations are AMD discharge, siltation and organic enrichment. As in any other coal mining area, acid mine drainage (AMD) is the main source of water pollution in the coal mining areas of Jaintia Hills. As discussed in previous chapter, AMD is formed by a series of complex geochemical and microbial reactions that occur when water comes in contact with pyrite (iron sulfide) found in coal and exposed rocks of overburden. Iron sulfide in presence of oxygen, water and bacteria forms sulphuric acid, is referred to as AMD. In the process, iron hydroxide, a yellowish orange precipitate, is also formed. The precipitate of iron hydroxide together with other contaminants causes turbidity and changes in colour of the water which reduces the penetration of light and affects the aquatic life. Extremely low pH conditions in the water accelerate weathering and dissolution of silicate and other rock minerals, thereby causing the release of other elements such as aluminium, manganese, copper, cadmium, etc. into the water. Hence, water contaminated with AMD is often coloured and turbid with suspended solids, highly acidic (low pH), and contains high concentration of dissolved metals and other elements. Most of the streams and rivers of Jaintia Hills in coal mining areas are severely contaminated with AMD and thus water has highly acidic. The pH and other parameters of some AMD affected water bodies are summarised in Table 4.1. Table 4.1: Summary of water quality parameters in some coal mining rivers/reservoir:

Sl. No.	Rivers/Streams & Location	Colour of water	pH	Sulphate contents (mg/l)	E Conductivity (pS/cm)
1.	Myntriang	Light	2.8	36	56
2.	Urn Pai	Brownish	3.2	186	160
3.	Rawaka, Rymbai	Reddish	2.31	166.5	135
4.	Kenaium,	Reddish	2.66	144.0	74
5.	Metyngka, Rymbai	Reddish brown	2.42	168.0	27
6.	Urn-Mynkseh, Ladrymbai	Brownish orange	3.52	118.7	67

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7.	Thwai-Kungor, Bapun	Brownish	4.01	82.87	18
8.	Umkyrpon, Khliehriat	Light orange	3.67	161.3	37
9.	Waikhrywi, Sutnga	Brownish	3.96	78.69	-
10.	Um Roong		2.8	896	128
11.	Mostem	Brownish	2.9	616	119
12.	Sarbang	Turbid	3.35	150	32
13.	Um Lurem	Yellowish	5.0	19	3
14.	Khongdong Reservoir	Clear	4.6	43	34

Source: Present study; GSI, 2006-7;

Biahwar, 2010

The results show that most of the rivers in the coal mining areas of Jaintia Hills are severely affected by AMD as is evident from the lower pH values, higher sulphate content and EC in water samples.”

64. Thus, there were clear allegations in the application that in spite of various remedial measures set out in the report no proper and effective remedial measures have been taken by the authorities concerned of the State of Meghalaya. Para 3(VI) is as follows:

“3. (VI) That the various remedial measures are set out in detail in Paras 4.4, 4.5, 5, 5.1 and 5.2 and other relevant paragraphs of the said report. However, to the best of knowledge of the applicant, no proper and effective remedial measures have been undertaken by the authorities concerned till date and the innocent citizens/water bodies, etc. of the areas concerned including that of Dima Hasao District in Assam continue to be subjected to the ill effect of the aforesaid illegal mining operation in the State of Meghalaya. That apart, continuous and irreparable damage on the environment, water, soil, agriculture, etc. in the areas concerned including Dima Hasao District of Assam are also continuing as a result of the said illegal mining operations in Jaintia Hills in the State of Meghalaya.”

65. Ground A of the application is also relevant to be reproduced which is to the following effect:

“Grounds

A. That the aforementioned illegal mining operations in the Jaintia Hills in the State of Meghalaya have not only caused serious and irreparable damage to the ecology, water bodies and the socio-economy of the areas concerned including of Dima Hasao District of Assam but has also resulted in serious erosion/corrosion of the underwater plants and machineries and equipments of the Kopili Hydro Power Project of the North-Eastern Electric Power Corporation of India (a Government of India undertaking), the ill effect of the said mining operation has been highlighted in detail in the aforementioned detailed project report by Dr O.P. Singh, Professor,

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a North-Eastern Hills University as well as the said article published in *International Journal of Environmental Sciences*. Though remedial measures were suggested in both the aforesaid studies, to the best of the knowledge of the applicant, no proper and effective remedial measures have been undertaken by the respondents herein and the ill effect of the said activities are still continuing to the detriment of the ecology, water bodies and socio-economy of the areas concerned including Dima Hasao District of Assam. It is most respectfully submitted that the total inaction on the part of the respondents herein in spite of detailed study on the subject with remedial suggestions are totally inexcusable and show the total callous attitude of the State respondents, the menace of illegal opencast mining operations in the Jaintia Hills in Meghalaya is still continuing to the detriment of the ecology and socio-economy of the areas concerned including Dima Hasao District of Assam and as such, warrants, in the most respectful submissions of the applicant, immediate intervention by this Hon'ble Tribunal. The aforesaid inaction has resulted in violation of the various enactments mentioned in Schedule I of the National Green Tribunal Act, 2010 including the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 apart from infringing the fundamental rights of the applicant under Articles 14 and 21 of the Constitution of India.”

e 66. The pleadings in OA No. 73 of 2014 as extracted above clearly and categorically alleged environmental degradation consequent to illegal coal mining. It was further stated that inaction of respondent authorities has resulted in violation of various enactments mentioned in Schedule I of the NGT Act, 2010 including the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. The application OA No. 73 of 2014 thus has clearly made out allegations which were sufficient for the Tribunal to exercise its jurisdiction as conferred by Section 14. Both the component as appearing in sub-section (1) of Section 14 that is (i) substantial question relating to environment, and (ii) such question arises out of the implementation of the enactments specified in Schedule I, were involved.

g 67. NGT after adverting to the application OA No. 73 of 2014 on 17-4-2014<sup>6</sup> has undertaken different proceedings and asked for various reports from different committees including State Pollution Control Board. By order dated 31-8-2018<sup>1</sup>, NGT had appointed a committee headed by Justice B.P. Katakey, former Judge of the Gauhati High Court which consisted of Prof. Ashok K. Singh, Rajiv Gandhi Chair Professor, Department of Environmental

h <sup>6</sup> *All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307

<sup>1</sup> *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241

Science & Engineering representative from Indian School of Mines, Dhanbad IIT (ISM), Dhanbad (826004), Dr Shantanu Kumar Dutta, Scientist 'D' representative of Central Pollution Control Board. The said Committee submitted interim report on 31-12-2018 and on the subject "Whether coal mining activities as well as dumping of coal results in adverse environmental effect, if so, the nature and extent thereof?" has been dealt with in Issue (D) in the following manner:

*"Issue (D) Whether coal mining activities as well as dumping of coal results in adverse environmental effect, if so, the nature and extent thereof?"*

(i) The Meghalaya State Pollution Control Board in the month of September 1997 published a report entitled "ENVIRONMENTAL IMPACT OF COAL MINING IN JAINTIA HILLS DISTRICT". The then Chairman of the said Board, in his foreword, has admitted unplanned and unscientific coal mining activities in the State for more than hundred years, which achieved dangerous dimensions since last two decades and are creating ecological disturbances and negative environmental impacts, to the extent that the very existence of biological life is threatened in the coal mining areas of the State. It has also been admitted that no systematic efforts to study such impacts have so far been made by any institution. The then Member Secretary of the Board, in the preface, has projected the adverse impacts on the environment because of the coal mining activities. The pH level in water of almost all the rivers and streams was found to be below the required level. In some rivers and streams, the pH level was found to be as low as 2.4. The Meghalaya State Pollution Control Board, in the said report, has observed that the random discharge of AMD and acidic run-offs from the coal storage areas have also made the rivers, streams and even groundwaters highly acidic. The ambient air quality of the coal mining and coal storage areas was also found to be degraded to certain extent. The Board, therefore, observed that—"The uncontrolled and unscientific coal mining operations in Jaintia Hills District have already created massive ecological disturbances and environmental degradation because presently neither any pollution control measures are adopted by the miners nor any sincere efforts are made for reclamation of the mine land." In the said report, the following recommendations were made to minimise the overall adverse environmental impacts of the mining activities:

(a) To generate social awareness among the public in general and the miners in particular about the adverse environmental impacts and the health hazards associated with such unscientific and unplanned coal mining activities.

(b) Preparation of the inventory of the mine owners, areas under mining and rate of land use change to get the first-hand knowledge about the quantum of the efforts required for better management of these activities.

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*a* (c) To enforce suitable legislations on the lines of the National Mineral Policy immediately for exploitation of coal in most sustainable manner.

(d) To engage expert institution for finding out the most suited technologies for the coal exploitation with appropriate pollution control measures in order to ensure that the environment as a whole is not subjected to further degradation.

*b* (e) To engage the expert institution for finding out the suitable ways for rehabilitation of the mined land in phased manner so that the scarce land resources can be brought back to productive uses.

(f) To look for the alternative transport facilities to control vehicular pollution.

*c* (g) To identify the suitable location for the storage of coal for sale with adequate facilities to treat dump run-offs.

*d* (h) To study the aspect of the presence of trace elements in the surface and groundwater because the low pH values increase the dissolution power of water. Large numbers of trace elements are always associated with the coal which gets dissolved in low pH waters. These trace elements are serious health hazards even in very low concentrations.

(i) To introduce lucrative schemes for the afforestation in the most affected areas.

*e* (j) To develop the State Mineral Policy with the interaction of government agencies, social institutions, local elders and the miners, keeping in view the specific land ownership system of the State. Nothing of the above recommendations have been implemented so far.

*f* (ii) It is, therefore, evident that apart from the water, air pollution, there is degradation of surface land because of the coal mining activities in the State of Meghalaya. Despite publication of the said report by the Meghalaya State Pollution Control Board as back as in the year 1997, no steps appeared to have been taken by any authority to check the adverse environmental effect and also to remedy the same.”

*g* **68.** The present is not a case of mere allegation of applicant of environmental degradation by illegal and unregulated coal mining rather there were materials on the record including the report of the experts, the Meghalaya State Pollution Control Board published in the month of September 1992, the report of Katakey Committee appointed by the Tribunal where environmental degradation of water, air and surface of the land was proved.

*h* **69.** 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, the learned counsel for the appellant has not even referred to

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application which was filed by the applicant in OA No. 73 of 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 which is under constitutional obligation to ensure clean environment to all its citizens. In cases pertaining to environmental matters the State has to act as facilitator and not as obstructionist. Article 48-A of the Constitution provides:

**“48-A. Protection and improvement of environment and safeguarding of forests and wildlife.—** The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.”

**70.** The learned counsel for the appellant has placed reliance on the judgment of this Court in *Techi Tagi Tara v. Rajendra Singh Bhandari*<sup>18</sup>. This Court had occasion to consider Sections 14, 15 and 2(m) of the National Green Tribunal Act, 2010, which involves the question of jurisdiction of NGT. The nature of order passed<sup>19</sup> by NGT which was challenged before this Court has been noticed in para 1 of the judgment, which is to the following effect: (SCC p. 737)

“1. This batch of appeals is directed against the judgment and order dated 24-8-2016 passed by the National Green Tribunal, Principal Bench, New Delhi (for short “NGT”) in *Rajendra Singh Bhandari v. State of Uttarakhand*<sup>19</sup>. On a reading of the judgment and order passed by NGT, it is quite clear that the Tribunal was perturbed and anguished that some persons appointed to the State Pollution Control Boards (for short “SPCBs”) did not have, according to NGT, the necessary expertise or qualifications to be members or Chairpersons of such high-powered and specialised statutory bodies and therefore did not deserve their appointment or nomination. While we fully commiserate with NGT and share the pain and anguish, we are of the view that the Tribunal has, at law, exceeded its jurisdiction in directing the State Governments to reconsider the appointments and in laying down guidelines for appointment to the SPCBs, however well-meaning they might be. Therefore, we set aside the decision of NGT, but note that a large number of disconcerting facts have been brought out in the judgment which need serious consideration by those in authority, particularly the State Governments that make appointments or nominations to the SPCBs. Such appointments should not be made casually or without due application of mind considering the duties, functions and responsibilities of the SPCBs.”

**71.** In the above background, this Court held that the failure of the State Government to appoint professionals and experienced persons to the key positions in the State Pollution Control Board cannot be classified as a primary

<sup>18</sup> (2018) 11 SCC 734

<sup>19</sup> *Rajendra Singh Bhandari v. State of Uttarakhand*, 2016 SCC OnLine NGT 456

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dispute over which NGT could have jurisdiction. The following was laid down in para 21: (*Techi Tagi Tara case*<sup>18</sup>, SCC p. 750)

a “21. As far as we are concerned, in the context of the Act, a dispute would be the assertion of a right or an interest or a claim met by contrary claims on the other side. In other words, the dispute must be one of substance and not of form and it appears to us that the appointments that we are concerned with are not “disputes” as such or even disputes for the purposes of the Act—they could be disputes for a constitutional court to resolve through a writ of quo warranto, but certainly not for NGT to venture into. The failure of the State Government to appoint professional and experienced persons to key positions in the SPCBs or the failure to appoint any person at all might incidentally result in an ineffective implementation of the Water Act and the Air Act, but this cannot be classified as a primary dispute over which NGT would have jurisdiction. Such a failure might be of a statutory obligation over which, in the present context and not universally, only a constitutional court would have jurisdiction and not a statutory body like NGT. While we appreciate the anxiety of NGT to preserve and protect the environment as a part of its statutory functions, we cannot extend these concepts to the extent of enabling NGT to consider who should be appointed as a Chairperson or a member of any SPCB or who should not be so appointed.”

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e 72. 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 *Techi Tagi Tara*<sup>18</sup> was on its own facts and does not help the appellant in the present case.

f 73. In view of the foregoing discussion, we reject the submission of the learned counsel for the State that the Tribunal exceeded its jurisdiction under Sections 14 and 15 in entertaining the application OA No. 73 of 2014. We also record our disapproval to the stand taken by the State in this regard.

**Point 2**

g 74. Before we proceed to consider the above points, first of all, we need to notice the nature of land tenure in the Hills Districts of the State of Meghalaya. The learned counsel for the parties are not at variance on the question of nature of land tenure in the Hills Districts of the State of Meghalaya.

h 74.1. By the North-Eastern Area Reorganisation Act, 1971 the State of Meghalaya was formed as independent full-fledged State. After the enforcement of the Constitution the area, now comprised in the State of Meghalaya, was included in the State of Assam, the administration and control

<sup>18</sup> *Techi Tagi Tara v. Rajendra Singh Bhandari*, (2018) 11 SCC 734

of which area was as per Article 244 of the Constitution of India read with the Sixth Schedule of the Constitution.

74.2. Insofar as the land tenure in the Hills Districts of Meghalaya is concerned, there is no substantial change after the advent of the Constitution. There was no payment system of land revenue before the advent of the Constitution in the Hills Districts of Meghalaya. The learned counsel for the parties have referred to various materials pertaining to the land tenure system prevalent in the Hills Districts of the State of Meghalaya. The lands in the Khasi Hills District of Meghalaya come under two divisions *Ri Raid* and *Ri Kynti*. *Ri Raid* lands are community lands which are set apart for the benefit and use of entire community. *Ri Kynti* lands are privately owned lands which were also owned by community as well as by individuals. The owner of the *Ri Kynti* land is an absolute proprietor. The tenure system in Jaintia Hills is classified into two types of lands, namely, *hali/irrigated land* and *highland*. *Hali* lands are further categorised in *raj land*, *service land*, *village puja land* and *private land*. Proprietary right does not vest in the State in respect to majority of lands which are either privately owned or owned by the tribal community. No system of payment of land revenue is prevalent in the Hills District of Meghalaya except lands which belong to the State.

74.3. For the purposes of the present case where the submission of the appellant is that land in which mining operations of coal is being done are lands belonging to tribals who are owners of the land as well as of the subsoil, we proceed with the assumption that tribal is the owner of the land. It is further the case of the appellant that in Hills Districts of the State of Meghalaya in land which is privately owned by the tribal or community owned, the tribals or the community or the clan are owners of both surface right and subsoil.

74.4. It is the case of the appellant that the State does not have any right in subsoil or minerals. The judgment of this Court in *Thressiamma Jacob v. Deptt. of Mining & Geology*<sup>20</sup>, is relied on. This Court in the above case had occasion to consider the question of ownership of subsoil/mineral rights in reference to *genmom* lands in Malabar area of the State of Madras. Holder of the *genmom* rights also claimed not only as proprietor of the soil but the owner of the minerals in the soil. This Court laid down the following in para 58: (SCC p. 752)

“58. For the abovementioned reasons, we are of the opinion that there is nothing in the law which declares that all mineral wealth/subsoil rights vest in the State, on the other hand, the ownership of subsoil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. In the instant appeals, no such deprivation is brought to our notice and therefore we hold that the appellants are the proprietors of the minerals obtaining in their lands. We make it clear that we are not making any declaration regarding their liability to pay royalty to the State as that issue stands referred to a larger Bench.”

20 (2013) 9 SCC 725 : (2013) 4 SCC (Civ) 559

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**75.** A Constitution Bench of this Court in *Anand Brahma Shah v. State of U.P.*<sup>21</sup>, had laid down that prima facie owner of a surface of the land is entitled to everything beneath the land unless there is an express or implied reservation in the grant. In para 13, the following has been laid down: (AIR p. 1088)

*“13. In our opinion, a reading of the two sanads supports the case of the appellant that there is no reservation of mineral rights in favour of the Government. The expression used in the sanad of 1803 AD is ‘You ought to consider him the Raja of immovable jagir and of mahal and everything appertaining thereto belongs to him’. In effect, the grant to the Raja in the two sanads is a grant of the lands comprised in the mahal of Agori and everything appertaining thereto and as a matter of construction the grant must be taken to be not only of the land but also of everything beneath or within the land. Prima facie the owner of a surface of the land is entitled ex jure to everything beneath the land and in the absence of any reservation in the grant minerals necessarily pass with the rights to the surface (Halsbury’s Laws of England, 3rd Edn., Vol. 26, p. 325). In other words, a transfer of the right to the surface conveys right to the minerals underneath unless there is an express or implied reservation in the grant. A contract, therefore, to sell or grant a lease of land will generally include mines, quarries and minerals beneath or within it (Mitchell v. Mosley<sup>22</sup>). It is manifest that when the sanad was executed in favour of the Raja the Government made over the land with all its capabilities to the Raja and merely imposed on him a fixed sum of revenue in lieu of all the rights the Government had as a proprietor of the soil. When neither of the parties knew undiscovered minerals underneath the land and the idea of reservation never entered their minds it cannot be held that there was any implied reservation in the grant. Nor can afterwards a distinction be drawn between the various rights that may exist on the land for the purpose of qualifying the original grant and importing into it what neither party could have imagined. It was argued on behalf of the respondents that the assessment was made on the agricultural income, but this circumstance cannot derogate from the rights conveyed to the Raja in the two sanads because no restriction was placed on the use of the land and the use by the Raja was not limited to agriculture.”*

**76.** Thus, looking to the nature of the land tenure as applicable in the Hills Districts of the State of Meghalaya, most of the lands are either privately or community owned in which the State does not claim any right. Thus, private owners of the land as well as community owners have both the surface right as well as subsoil right. We are, thus, of the opinion that tribals owned the land and also owned the minerals, which is an inescapable conclusion. We, thus, proceed to examine the issues on the premise that in privately owned land or community land, minerals also vest in the owner. We first need to consider as to whether the provisions of the MMDR Act, 1957 are applicable in the tribal area of Hills Districts of the State of Meghalaya.

<sup>21</sup> AIR 1967 SC 1081

<sup>22</sup> (1914) 1 Ch 438 (CA)

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77. Part X of the Constitution separately deals with scheduled and tribal areas. Hills Districts of the State of Meghalaya were treated to be tribal area and were to be governed by Article 244 sub-clause (2) read with Schedule VI. Provisions of Article 244 after formation of the State of Meghalaya are as follows:

**“244. Administration of Scheduled Areas and Tribal Areas.—**(1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.”

78. The Sixth Schedule of the Constitution contains “Provisions as to the Administration of Tribal Areas in the States of Assam, Meghalaya, Tripura and Mizoram”. Para 20 of the Sixth Schedule refers to tribal areas and Part II of which consists of Khasi Hills District, Jaintia Hills District and Garo Hills District which have been referred to as autonomous districts. The Sixth Schedule Para 1(1) is as follows:

**“1. Autonomous districts and autonomous regions.—**(1) Subject to the provisions of this paragraph, the tribal areas in each item of Parts I, II and II-A and in Part III of the table appended to Para 20 of this Schedule shall be an autonomous district.”

79. Para 2 of the Sixth Schedule provides for constitution of District Councils and Regional Councils. Para 3 provides for powers of the District Councils and Regional Councils to make laws which is to the following effect:

**“3. Powers of the District Councils and Regional Councils to make laws.—**(1) The Regional Council for an autonomous region in respect of all areas within such region and the District Council for an autonomous district in respect of all areas within the district except those which are under the authority of Regional Councils, if any, within the district shall have power to make laws with respect to—

(a) the allotment, occupation or use, or the setting apart, of land, other than any land which is a reserved forest for the purposes of agriculture or grazing or for residential or other non-agricultural purposes or for any other purpose likely to promote the interests of the inhabitants of any village or town:

Provided that nothing in such laws shall prevent the compulsory acquisition of any land, whether occupied or unoccupied, for public purposes by the Government of the State concerned in accordance with the law for the time being in force authorising such acquisition;

(b) the management of any forest not being a reserved forest;

(c) the use of any canal or water-course for the purpose of agriculture;

(d) the regulation of the practice of jhum or other forms of shifting cultivation;

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a (e) the establishment of village or town committees or councils and their powers;

(f) any other matter relating to village or town administration, including village or town police and public health and sanitation;

(g) the appointment or succession of Chiefs or Headmen;

(h) the inheritance of property;

b (i) marriage and divorce;

(j) social customs.

(2) In this paragraph, a “reserved forest” means any area which is a reserved forest under the Assam Forest Regulation, 1891, or under any other law for the time being in force in the area in question.

c (3) All laws made under this paragraph shall be submitted forthwith to the Governor and, until assented to by him, shall have no effect.”

80. Para 9 of the Sixth Schedule, which is relevant for the present case, is as follows:

d “9. *Licences or leases for the purpose of prospecting for, or extraction of, minerals.*—(1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of the State in respect of any area within an autonomous district as may be agreed upon between the Government of the State and the District Council of such district shall be made over to that District Council.

e (2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final.”

81. Para 12-A, which is relevant for Meghalaya, is as follows:

f “12-A. *Application of Acts of Parliament and of the Legislature of the State of Meghalaya to autonomous districts and autonomous regions in the State of Meghalaya.*—Notwithstanding anything in this Constitution—

g (a) if any provision of a law made by a District or Regional Council in the State of Meghalaya with respect to any matter specified in sub-Para (1) of Para 3 of this Schedule or if any provision of any regulation made by a District Council or a Regional Council in that State under Para 8 or Para 10 of this Schedule, is repugnant to any provision of a law made by the Legislature of the State of Meghalaya with respect to that matter, then, the law or regulation made by the District Council or, as the case may be, the Regional Council whether made before or after the law made by the Legislature of the State of Meghalaya, shall, to the extent of repugnancy, be void and the law made by the Legislature of the State of Meghalaya shall prevail;

h (b) the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or

an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification and any such direction may be given so as to have retrospective effect.”

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**82.** Now, we revert back to the Mines and Minerals (Development and Regulation) Act, 1957. The 1957 Act has been enacted to provide for development and regulation of mines and minerals under the control of the Union. Section 1 of the Act is as follows:

**“1. Short title, extent and commencement.**—(1) This Act may be called the Mines and Minerals (Development and Regulation) Act, 1957.

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(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.”

**83.** The Act came into effect w.e.f. 1-6-1958. Whether there are any indications in the Sixth Schedule or any other provision of the law by which it can be contended that the 1957 Act is not applicable in Hills District of tribal areas of the State of Meghalaya? We may first refer to the Sixth Schedule of the Constitution which is a provision for administration of tribal areas in the State of Meghalaya. Para 12-A sub-clause (b) empowers that the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification. No notification has been issued by the President under Para 12-A(b) of the sixth Schedule of the Constitution, although, the said Para 12-A(b) is in the Constitution with effect from 21-1-1972. Thus, there is nothing in the Sixth Schedule of the Constitution which may indicate about the inapplicability of the 1957 Act with regard to the Hills Districts of the State of Meghalaya. At this juncture, we may also notice the report of the Comptroller and Auditor General of India for the year ended 31-3-2013. In Para 7.5.1 the report mentions:

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**“7.5.1. Introduction**

Meghalaya is endowed with sizeable deposits of valuable minerals like coal, limestone, uranium, granite and clay. Minerals being valuable resource, the extraction needs to be maximised through scientific methods of mining with aim to ensure extraction and utilisation of minerals. Besides, most of the mineral reserves are in areas which are under forest cover and hence, mining in the State has environmental implications. In Meghalaya, individual and local communities have ownership over the land and the minerals and barring a few reserve forest areas, the State Government has no ownership over the minerals. The activities of the Mining & Geology (M&G) Department, Government of Meghalaya (GOM) are limited to collection of royalty on the minerals exported outside the State besides geological investigation/exploration of minerals. The Mines and Minerals (Development and Regulation) Act, 1957 lays down

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a the legal framework for regulation of mines and development of minerals. The Mineral Concession Rules, 1960 and the Mineral Conservation and Development Rules, 1988 were accordingly framed under the MMDR Act framed for conservation and systematic development of minerals and for regulating grant of permits, licences and leases. The GOM has introduced the Meghalaya Mineral Cess Act, 1988 to mobilise additional revenue. Further, with a view to facilitating systematic, scientific and planned utilisation of mineral resources and to streamline mineral based development of the State, the Meghalaya Mines and Mineral Policy, 2012 has also been notified with effect from 5-11-2012.”

b **84.** The Comptroller and Auditor General has clearly stated that the 1957 Act is fully applicable for regulation of mines and regulation of minerals in the State of Meghalaya.

c **85.** The learned counsel for the State of Meghalaya has also filed before us along with an affidavit of Joint Secretary of Government of Meghalaya, Mining and Geology Department dated 13-4-2018 by which Meghalaya Mines and Minerals Policy, 2012 issued by the Government of Meghalaya as well as draft guidelines of coal mining activities in the State prepared in the year 2015 have been brought on the record.

d **86.** Clause 10 of the Policy provides for “Regulatory Framework for Mine Development and Mining”. Sub-clause (b) of Clause 10 required application for mineral concession either fresh or renewal is to be submitted to the State Government through the Deputy Commissioner of the district wherein the area applied for is situated and with NOC from District Council concerned and landowner. Clause 10 also refers to clearance of the Pollution Control Board of Meghalaya and other requirement. Sub-clause (1) further contemplated that order for grant of mineral concessions will be issued by the State Government, with the approval of the Central Government wherever necessary. Thus, the Policy of 2012 contemplated regulatory regime for mining lease by the State. The Mining and Geology Department of the Government had framed draft guidelines for coal mining activity in the State which has also been brought on record along with the above affidavit dated 13-4-2018.

e **87.** The above guidelines were prepared after/in consultation with the Central Government.

f **88.** The above draft guidelines prepared by the State clearly mention about the unregulated and unscientific mining being carried out in the State of Meghalaya. The Policy Guidelines of Coal Mining which is part of the guidelines also contains the following statement:

g “The Mines Act, 1952 and the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR), together with the rules and regulations framed under them constitute the basic laws governing the mining sector in India. While the Mines Act, 1952 governs the health and safety of the workers, the MMDR Act, 1957 (including all amendments) lays down the legal framework for the regulation of mines and development of all minerals other than petroleum and natural gas. The relevant rules in force

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under the MMDR Act, 1957 are the Mineral Concession Rules (MCR), 1960 outline the procedures and conditions for obtaining a prospecting licence or mining lease. The MCDR, 1988 lays down guidelines for ensuring mining on a scientific basis, while conserving the environment, at the same time.

Apart from the mining statutes, which also govern environment in mines, India has elaborate environment statutes for protection of environment in mining.”

**89.** One submission of Shri Naphade with respect to direction of NGT to frame Mining Policy by the State also needs consideration. Shri Naphade submits that the State of Meghalaya having no legislative competence with regard to major minerals, the National Green Tribunal could not have directed the State of Meghalaya to frame Mining Policy.

**90.** There can be no dispute to the proposition that in view of the MMDR Act, 1957, the legislative competence of State of Meghalaya under Schedule VII List II Entry 23 stands denuded. However, under the MMDR Act, 1957 as well as the Mineral Concession Rules, 1960, several statutory obligations/jurisdictions have been conferred on the State of Meghalaya, which shall be referred to later in this judgment.

**91.** When under a parliamentary enactment, the State has been given some statutory obligations, there is no lack of jurisdiction in the State to frame policy to give effect to or implement the jurisdictions conferred on the State by parliamentary enactments. It is true that Mining Policy to be framed by the State has to confine to the jurisdiction conferred on it as per the MMDR Act, 1957 and the Rules framed thereunder. There are other related issues concerning mining like protection of environment and forests for which the State has to declare its policy for implementation of its objective. Several other aspects relating to mining, like rehabilitation, reclamation and restoration have to be effectively implemented by the State for which also, it may be required to frame a policy. We may further notice that the Meghalaya Mines and Minerals Policy, 2012 was already framed by the State of Meghalaya, even before directions were issued by NGT. In pursuance of the NGT directions, it was draft guidelines of 2015, which were prepared by the State of Meghalaya. We, thus, are of the view that direction of NGT to declare Mining Policy by the State of Meghalaya cannot be said to be without jurisdiction. However, the State in its Mining Policy can only include those areas where it has jurisdiction under the MMDR Act, 1957 and the Rules framed thereunder.

**92.** A perusal of the entire Policy documents indicate that the Policy has been framed by the State as per the 1957 Act and the Mineral Concession Rules, 1960.

**93.** The Government of Meghalaya has also made a request to the Government of India in the year 2015 for issuance of presidential notification under Para 12-A(b) of the Sixth Schedule for exempting the State of Meghalaya from certain provisions of the MMDR Act, 1957. After several deliberations, the Union of India has communicated through its OM dated 12-3-2019 that it is not possible to accede to the request of the Government of Meghalaya for issuance of presidential notification under Para 12-A(b) of the Sixth Schedule.

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*a* Thus, the request made by the State of Meghalaya to issue exemption has not also been acceded to. The request of the State of Meghalaya that exemption be granted by presidential notification under Para 12-A(*b*) itself expresses recognition of the State of Meghalaya that provisions of the 1957 Act are applicable. We, thus, conclude that there is nothing in the Sixth Schedule of the Constitution which in any manner excludes the applicability of the 1957 Act in the tribal areas of Hills Districts of the State of Meghalaya.

*b* **Point 3**

**94.** We need to scan through the statutory scheme of the 1957 Act to find out as to whether parliamentary legislation requires obtaining lease for winning the minerals insofar as mining of coal from privately owned land/community owned land are concerned?

**95.** Section 2 of the 1957 Act contains declaration to the following effect:

*c* **“2. Declaration as to expediency of Union Control.**—It is hereby declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided.”

*d* **96.** The 1957 Act has been enacted in reference to Schedule VII List I Entry 54 to the following effect:

**“54.** Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.”

*e* **97.** At this juncture, we may notice Schedule VII List II Entry 23, which is to the following effect:

**“23.** Regulation of mines and mineral development subject to the provisions of List I with respect to regulation and development under the control of the Union.”

*f* **98.** The legislative power under Entry 23 is subject to the provision of List I with respect to regulation and development under the control of the Union. When the Union has declared to have taken under its control the regulation of mines and development of minerals to the extent provided in the Act, the legislative power of the State to the above extent is denuded. The learned counsel for the appellant have also very fairly not disputed the position in law.

*g* **99.** Section 3 of the Act contains definition clause. Section 3(*c*) defines “mining lease” and Section 3(*d*) defines a “mining operation” which are to the following effect:

**“3. (c) “mining lease”** means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;

**(d) “mining operations”** means any operations undertaken for the purpose of winning any mineral;”

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**100.** Section 4 of the Act contains general restriction on undertaking prospecting and mining operation. Section 4 is couched in terms of an injunction. No person shall undertake any mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and Rules made thereunder. Sub-section (1) of Section 4 is relevant in the present case, which is as follows:

**“4. Prospecting or mining operations to be under licence or lease.—**

(1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the Rules made thereunder:

Provided that nothing in this sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, the Atomic Minerals Directorate for Exploration and Research of the Department of Atomic Energy of the Central Government, the Directorates of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Ltd., a government company within the meaning of clause (45) of Section 2 of the Companies Act, 2013 (18 of 2013), and any such entity that may be notified for this purpose by the Central Government:

Provided also that nothing in this sub-section shall apply to any mining lease (whether called mining lease, mining concession or by any other name) in force immediately before the commencement of this Act in the Union Territory of Goa, Daman and Diu.”

**101.** The use of words “no person” in Section 4(1) is without an exception. There is nothing in Section 4(1) to indicate that restriction contained in Section 4(1) does not apply with regard to a person who is owner of the mine. Further, words “any area” under Section 4(1) also have significance which does not have any exception. Further phrase “except under and in accordance with terms and conditions with a mining lease granted under the Act” are also significant which make the intent and purpose of prohibition clear and loud. Section 5 contains restriction on the grant of prospecting licences and mining lease in the following words:

**“5. Restrictions on the grant of prospecting licences or mining leases.—**

(1) A State Government shall not grant a reconnaissance permit, prospecting licence or mining lease to any person unless such person—

(a) is an Indian national, or company as defined in clause (20) of Section 2 of the Companies Act, 2013 (18 of 2013); and

(b) satisfies such conditions as may be prescribed:

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a Provided that in respect of any mineral specified in Part A and Part B of the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Central Government.

*Explanation.*—For the purposes of this sub-section, a person shall be deemed to be an Indian national—

b (a) in the case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of India; and

(b) in the case of an individual, only if he is a citizen of India.

(2) No mining lease shall be granted by the State Government unless it is satisfied that—

c (a) there is evidence to show the existence of mineral contents in the area for which the application for a mining lease has been made in accordance with such parameters as may be prescribed for this purpose by the Central Government;

d (b) there is a mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned:

Provided that a mining lease may be granted upon the filing of a mining plan in accordance with a system established by the State Government for preparation, certification, and monitoring of such plan, with the approval of the Central Government.”

e **102.** The proviso to Section 5(1) is relevant since it contains a further restriction that no mining lease shall be granted with regard to any minerals specified in Para A of the First Schedule except with the previous approval of the Central Government. We in the present case are concerned with coal which is in Para A of First Schedule.

f **103.** The next provision which is relevant is Section 13 which provides for rule-making power of the Central Government in respect of minerals. Section 13 sub-section (1) and Section 13 sub-section (2) insofar as relevant in the present case are as follows:

g “**13. Power of Central Government to make rules in respect of minerals.**—(1) The Central Government may, by notification in the Official Gazette, make rules for regulating the grant of reconnaissance permits, prospecting licences and mining leases in respect of minerals and for purposes connected therewith.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters,—

h (a) the person by whom, and the manner in which, applications for reconnaissance permits, prospecting licences or mining leases in respect of land in which the minerals vest in the Government may be made and the fees to be paid therefor;

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(f) the procedure for obtaining a reconnaissance permit, a prospecting licence or a mining lease in respect of any land in which the minerals vest in a person other than the Government and the terms on which, and the conditions subject to which, such a permit, licence or lease may be granted or renewed;"

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**104.** When we read clause (a) and clause (f), it makes clear that the Rules can be made for grant of mining lease in respect of land in which minerals vest in the Government as well as in respect of any land in which minerals vest in person other than the Government. The statutory scheme, thus, is clear that lease can be granted with regard to both the categories of land, land in which the Government is owner of minerals and land in which minerals vest in person other than the Government. The tribals, owners of the minerals shall expressly fall in rule-making power of the Government under Section 13(f).

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**105.** The Central Government in exercise of power under Section 13 has framed the Rules, namely, the Mineral Concession Rules, 1960. Chapter IV of the Rules contains a heading "Grant of mining lease in respect of land in which the minerals vest in the Government". Rules 22 to 40 contain various provisions under Chapter IV. Chapter V has a separate heading which is "*Procedure for obtaining a prospecting licence or mining lease in respect of land in which the minerals vest in a person other than the Government*". Thus, Chapter V contains provisions for grant of lease in respect of minerals which vest in the person other than the Government. Rules 41 and 42 which are relevant are quoted below:

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**41. Applicability of this chapter.**—The provisions of this chapter shall apply only to the grant of prospecting licences and mining leases in respect of land in which the minerals vest exclusively in a person other than the Government.

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**42. Restrictions on the grant of prospecting licence and mining lease.**—(1) No prospecting licence or mining lease shall be granted to any person unless he has filed an affidavit stating that he has—

(i) filed up-to-date income tax returns;

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(ii) paid the income tax assessed on him, and

(iii) paid the income tax on the basis of self-assessment as provided in the Income Tax Act, 1961 (43 of 1961).

(2) Except with the previous approval of the Central Government, no prospecting licence or mining lease shall be granted in respect of any mineral specified in the First Schedule to the Act."

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**106.** The statutory scheme delineated by Section 13(2)(f) and the Mineral Concession Rules, 1960 clearly contemplate grant of mining lease, with regard to both the categories of land, that is, land in which minerals vest in the Government, and the land in which minerals vest in a person other than the Government. In statutory provisions there is no kind of exception as contended by the learned counsel for the appellant that when owner himself wants to win

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a the minerals he does not require any mining lease. The submission is contrary to the express statutory scheme, in the event the submission of the appellant is accepted that with regard to minerals which vest in a private person no mining lease is required, the whole object of the Union by which it declared to have taken under its control regulation of mines and development of minerals shall be frustrated.

b **107.** Another limb of the submission of the appellant needs to be noticed here. Shri Naphade submits that there is no concept of owner of a land granting lease to himself. He submits that concept of lease is well known and well-recognised concept as contained in Section 105 of the Transfer of Property Act. Section 105 of the Transfer of Property Act is as follows:

c **“105. Lease defined.**—A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

d **Lessor, lessee, premium and rent defined.**—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.”

**108.** *Halsbury’s Laws of England*, 4th Edn., Para 321 defines “nature of mining lease” in the following manner:

e **“321. Nature of mining lease.**—A lease may be granted of land or any part of land, and since minerals are a part of the land it follows that a lease can be granted of the surface of the land and the minerals below, or of the surface alone, or of the minerals alone. It has been said that a contract for the working and getting of minerals, although for convenience called a mining lease, is not in reality a lease at all in the sense in which one speaks of an agricultural lease, and that such a contract, properly considered, is really a sale of a portion of the land at a price payable by instalments, that is, by way of rent or royalty, spread over a number of years.”

f **109.** This Court had occasion to consider the concept of mining lease under the 1957 Act in *Tarkeshwar Sio Thakur Jiu v. Dar Dass Dey & Co.*<sup>23</sup>. This Court held that term “lease” occurring in Section 3(c) of Act 67 of 1957 *does not appear to have been used in the narrow technical sense in which it is defined in Section 105 of the Transfer of Property Act but it has all the characteristics of a lease as defined in the Transfer of Property Act.* (emphasis supplied) In para 31, the following was laid down: (SCC p. 115)

g **“31.** It is important to bear in mind that the term “lease” occurring in the definition of “mining lease” given in Section 3(c) of Act 67 of 1957 does not appear to have been used in the narrow technical sense in which it is defined in Section 105 of the Transfer of Property Act. But, as rightly

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pointed out by a Bench of the Calcutta High Court in *Falakrishna Pal v. Jagannath Marwari*<sup>24</sup> a settlement of the character of a mining lease is everywhere in India regarded as “lease”. A mining lease, therefore, may not meticulously and strictly satisfy in all cases, all the characteristics of a “lease” as defined in the Transfer of Property Act. Nevertheless, in the legally accepted sense, it has always been regarded as a lease in this country.”

**110.** This Court proceeded further to consider Section 105 of the Transfer of Property Act and opined the following in para 37: (*Tarkeshwar Sio case*<sup>23</sup>, SCC p. 116)

“37. A right to carry on mining operations in land to extract a specified mineral and to remove and appropriate that mineral, is a “right to enjoy immovable property” within the meaning of Section 105; more so, when—as in the instant case—it is coupled with a right to be in its exclusive khas possession for a specified period. The “right to enjoy immovable property” spoken of in Section 105, means the right to enjoy the property in the manner in which that property can be enjoyed. If the subject-matter of the lease is mineral land or a sand-mine, as in the case before us, it can only be enjoyed and occupied by the lessee by working it, as indicated in Section 108, Transfer of Property Act, which regulates the rights and liabilities of lessors and lessees of immovable property.”

**111.** This Court further following *Nageshwar Bux Roy v. Bengal Coal Co. Ltd.*<sup>25</sup>, in *State of Karnataka v. Subhash Rukmayya Guttedar*<sup>26</sup> laid down the following in para 6: (SCC pp. 294)

“6. ... The question, therefore, is whether the grant of the right to extract the minor mineral from government quarry is a lease or a licence and whether the contractor is liable to pay the royalty in respect of minor mineral extracted from the government quarry. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The normal connotation of the term lease is the preservation of the demised estate to be in occupation and enjoyment thereof for a specified period or in perpetuities for consideration; the corpus by user thereof does not disappear and at the expiry of the term or on termination the same is handed over to the lessor subject to the terms of the contract, express or implied. A right to carry on mining operations in the land on surface or subsoil is to extract the specified quantity of the minerals found therein, to remove and appropriate that mineral. Section 9

24 1932 SCC OnLine Cal 80 : AIR 1932 Cal 775

23 *Tarkeshwar Sio Thakur Jiu v. Dar Dass Dey & Co.*, (1979) 3 SCC 106

25 1930 SCC OnLine PC 83 : (1930-31) 58 IA 29

26 1993 Supp (3) SCC 290

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a of the Mines and Minerals (Development & Regulation) Act, 1957 affords the guidance in this behalf. It says that the holder of a mining lease or agent, etc. is entitled to remove or consume the mineral. It would mean destruction of the estate leased out and appropriation thereof on payment of consideration i.e. royalty. Therefore, it is a right to enjoy immovable property within the meaning of Section 105 more so when, as in the instant case, it is coupled with a right to be in occupation or enter into possession for a specified period. Section 3(d) of the Act defines “mining operations” to mean any operation undertaken for the purpose of winning any minerals. It is true that no right, title or interest has been created in the contractor over the mining area. But he has been permitted to remove and use the minor minerals in the execution of the works as its (sic his) right to enjoy immovable property spoken of in Section 105 which means the right to enjoy the property in the manner in which that property can be enjoyed. In *Nageshwar Bux Roy v. Bengal Coal Co. Ltd.*<sup>25</sup> Lord Macmillan speaking for the Board held that: (SCC OnLine PC)

b  
c  
d ‘In considering the character and effect of acts of possession in the case of a mineral field, it is necessary to bear in mind the nature of the subject and the possession of which it is susceptible. Owing to the inaccessibility of minerals in the earth, it is not possible to take actual physical possession at once of a whole mineral field: it can be occupied only by extracting the minerals and until the whole minerals are exhausted the physical occupation must necessarily be partial.’ ”

e  
f **112.** The words “mining lease” have been given specific meaning under the 1957 Act. It is well-settled principle of interpretation that the provisions of an Act including definition of a term are to be interpreted in a manner which may advance the object of the legislation. The essential characteristic of mining lease is that it is granted *for the purpose of undertaking mining operation* and mining operation means any operation undertaken for the purpose of winning the mineral. Applying the aforesaid definition in the Mineral Concession Rules, 1960 under Chapter V it cannot be said that no mining lease is contemplated with respect to land where mineral vests exclusively in a private person.

**113.** The examination of a statutory scheme applicable in tribal areas of the State of Meghalaya shall not be complete unless we notice two more aspects, they are:

- g  
 (i) the Mines Act, 1952 and the Regulations framed thereunder;  
 (ii) the Environment Protection Act, 1986 and the notification issued thereunder with regard to mining project.

**114.** The Mines Act, 1952 is an Act to amend and consolidate the law relating to the regulation of labour and safety of mines. The Act contains various provisions regarding inspection of mining operation and management

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of mines. Section 16 provides a notice to be given to mining operations by the owner agent or manager of a mine. Section 16 is as follows:

**“16. Notice to be given of mining operations.—**(1) The owner, agent or manager of a mine shall, before the commencement of any mining operation, give to the Chief Inspector, the Controller, Indian Bureau of Mines and the District Magistrate of the district in which the mine is situate, notice in writing in such form and containing such particulars relating to the mine as may be prescribed. a

(2) Any notice given under sub-section (1) shall be so given as to reach the persons concerned at least one month before the commencement of any mining operation.” b

**115.** Section 18 contains duties and responsibilities of owners, agents and managers. There are various other provisions in the Mines Act, 1952 which are mandatory to be followed before working any mine. The learned counsel for the appellant has not disputed that the provisions of the Mines Act, 1952 are applicable with regard to the coal mining in the State of Meghalaya. He, however, submits that there are no powers with the District Magistrate or State Officials under the Mines Act, 1952. Chapter II of the Mines Act, 1952 deals with Inspectors and Certifying Surgeons. Section 5(3) provided that the District Magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the Central Government. Section 5(3) is as follows: c

**“5. (3)** The District Magistrate may exercise the powers and perform the duties of an Inspector subject to the general or special orders of the Central Government.” d

**116.** The above provision clearly empowers the District Magistrate to exercise the powers and perform the duties of an Inspector but subject to general and special orders of the Central Government, which means that there may be some restriction on the power of the District Magistrate as directed by the Central Government. In this context, Shri Naphade has referred to a Notification dated 18-9-1953 issued under sub-section (3) of Section 5 of the Mines Act, 1952, which is to the following effect: e

*“New Delhi, 18-9-1953*

*S.R.O. 1789—*In pursuance of sub-section (3) of Section 5 of the Mines Act, 1952 (XXXV of 1952), the Central Government hereby directs that in exercising the powers and performing the duties of an Inspector, the District Magistrate shall not, without prior reference to the Chief Inspector, take direct action or issue any order in respect of any matter solely connected with the technical direction, management or supervision of any mine, even though such direction, management or supervision may appear to him to be dangerous or defective. f

[No. M-41 (370 52.)]

P.N. Sharma, Under-Secretary” g

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- 117.** The restriction as is apparent from the above notification is with regard to matters solely connected with the technical direction, management or supervision of any mine. The above notification does not take away all the functions of the District Magistrate but restriction is with regard to area mentioned therein. As noted above, Section 16 obliged the owner, agent or manager of a mine to give notice before the commencement of any mining operation to the District Magistrate of the district in which the mine is situate.
- b** Section 75 of the Mines Act, 1952 also empowers the District Magistrate to institute prosecution against any owner, agent or manager for any offence under the Mines Act, 1952. Section 75 is as follows:

- c** “**75. Prosecution of owner, agent or manager.**—No prosecution shall be instituted against any owner, agent or manager for any offence under this Act except at the instance of the Chief Inspector or of the District Magistrate or of an Inspector authorised in this behalf by general or special order in writing by the Chief Inspector;

Provided that the Chief Inspector or the District Magistrate or the Inspector as so authorised shall, before instituting such prosecution, satisfy himself that the owner, agent or manager had failed to exercise all due diligence to prevent the commission of such offence.

- d** Provided further that in respect of an offence committed in the course of the technical direction and management of a mine, the District Magistrate shall not institute any prosecution against an owner, agent or manager without the previous approval of the Chief Inspector.”

- e** **118.** We, thus, do not accept the submission of Shri Naphade that the District Magistrate has no jurisdiction under the Mines Act, 1952 to take any action.

- f** **119.** In exercise of the power under Section 57 of the Mines Act, 1952 a new set of regulations has been framed, namely, the Coal Mines Regulations, 2017. Regulation 2(*r*) defines “District Magistrate”. The Regulations contain various regulatory provisions with regard to mines. Chapter II deals with returns, notices and records. Chapter IV deals with Inspectors and Mine Officials. The Regulations contain several regulatory provisions which need to be followed while working a mine by the owner or his agent. The enforcement of the Mines Act, 1952 and the 2017 Regulations have to be ensured in the public interest by the State of Meghalaya.

- g** **120.** Now we come to the Environment (Protection) Act, 1986. A Notification dated 14-9-2006 was issued by the Ministry of Environment and Forests in exercise of power under Section 3(3) of the Environment Protection Act, 1986. Section 3 of the 1986 Act which provided for requirements of prior environmental clearance with regard to projects enumerates therein. The Schedule to the notification listed the projects or activities requiring prior environmental clearance. “Mining of minerals” included at Item 1(*a*) but even for mining project requirement of minimum 5 hectares area was required
- h** for applicability of the project. Substituting Item 1(*a*) of the Notification

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dated 14-9-2006 a new Notification dated 15-1-2016 has been issued. In place of Item 1(a) new entry has been substituted in respect of coalmine lease which is to the following effect:

(1)	(2)	(3)	(4)	(5)
1(a)	(i) Mining of minerals	>50 ha of mining lease areas in respect of non-coalmine lease  >150 ha of mining lease area in respect of coalmine lease  Asbestos mining irrespective of mining area	<50 ha of mining lease area in respect of non-coalmine lease  <150 ha of mining lease area in respect of coal mine lease	General conditions shall apply except: (i) for project or activity of mining of minor minerals of Category 'B2' (up to 25 ha of mining lease area); (ii) Riverbed mining projects on account of inter-State boundary."

121. If the project was under Category 'A', environmental clearance is required from the Ministry of Environment and Forests whereas as per the new Notification dated 15-1-2016 for Project 'B' environmental clearance is required from State Environmental Assessment Authority with respect of coal mining lease area of less than or equal to 150 ha. Now as per statutory regime brought in force by the Notification dated 15-1-2016 environmental clearance is required for a project of coal for mining of any extent of area. We have dealt with the Notification dated 15-1-2016, since it was placed before us and submissions were made by the learned counsel for the parties. The Notification dated 15-1-2016 being a statutory provision shall operate on its own force and no order of any court is required for enforcement of the Notification dated 15-1-2016. We have dealt with the matter only in view to clarify the statutory regime pertaining to mining of coal.

122. While implementing statutory regime for carrying on mining operations in the Hills Districts of the State of Meghalaya, the State of Meghalaya has to ensure compliance of not only the MMDR Act, 1957 but the Mines Act, 1952 as well as the Environment (Protection) Act, 1986.

**Point 4**

123. We having held that for carrying out mining operations in privately owned and community owned land in Hills Districts of Meghalaya, obtaining a mining lease is a mandatory requirement for carrying out the mining, we have to examine the procedure for grant of such mining lease and the authority/person, who is competent to grant such lease.

124. Chapter IV of the Mineral Concession Rules, 1960 deals with grant of mining leases in respect of land in which the minerals vest in the Government

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*a* and Chapter V deals with procedure for obtaining a prospecting licence or mining lease in respect of land in which the minerals vest in a person other than the Government. Chapter IV contains Rules 22 to 40 and Chapter V contains Rules 41 to 52 and the procedure and manner of applying for mining lease and grant of lease as contained in Chapter IV is not made applicable to the procedure as given in Chapter V except that by virtue of Rule 45(i) certain conditions of mining lease as contained in Rule 27 under Chapter IV are made applicable for mining lease under Chapter V.

*b* **125.** Rule 22(1) provides that an application for the grant of a mining lease in respect of land in which the minerals vest in the Government shall be made to the State Government in Form I through such officer or authority as the State Government may specify in this behalf. In Chapter V, there is no such rule, which requires making an application for lease to the State Government. There is a marked difference between the rules contained in Chapter IV and rules contained in Chapter V, few of which are relevant to notice for the purposes of this case. Rule 27(2) provides that a mining lease may contain such other conditions as the *State Government may deem necessary* in regard to the matters enumerated therein. Whereas Rule 45(iii) provides that every mining lease may contain such other conditions, not being inconsistent with the provisions of the Act and these rules, as may be *agreed upon between the parties*. The above provision gives an indication that in the lease executed by Chapter V, the omission of the words “State Government” in Rule 45(iii) is indicative of the fact that conditions, which are to be added has to be agreed upon between the parties. Most important rule to be noticed is Rule 45 in this context, which is to the following effect:

*e* **“45. Conditions of mining lease.**—Every mining lease shall be subject to the following conditions:—

*f* (i) the provisions of clauses (b) to (l) and (p) to (u) of sub-rule (1) of Rule 27 shall apply to such leases with the modification that in clauses (c) and (d) for the words “State Government” the word “lessor” shall be substituted;

(ia) mining operations shall be undertaken in accordance with the duly approved mining plan;

(ii) *Omitted*;

*g* (iii) the lease may contain such other conditions, not being inconsistent with the provisions of the Act and these rules, as may be agreed upon between the parties;

*h* (iv) if the lessee makes any default in payment of royalty as required by Section 9 or commits a breach of any of the conditions of the lease, the lessor shall give notice to the lessee requiring him to pay the royalty or remedy the breach, as the case may be, within sixty days from the date of the receipt of the notice and if the royalty is not paid or the breach is not remedied within such period, the lessor without prejudice to any proceeding that may be taken against the lessee determine the lease;

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(v) the lessee may determine the lease at any time by giving not less than one year's notice in writing to lessor."

**126.** It is provided in Rule 45(i) that in clauses (c) and (d) of Rule 27 for the words "State Government" the word "lessor" shall be substituted, which gives a clear indication that the State Government is not a lessor in a lease granted under Chapter V. Rules 27(5) and 45(iv) are also relevant to notice. Rule 27(5) provides as follows:

"**27. (5)** If the lessee makes any default in the payment of royalty as required under Section 9 or payment of dead rent as required under Section 9-A or commits a breach of any of the conditions specified in sub-rules (1), (2) and (3), except the condition referred to in clause (f) of sub-rule (1), the State Government shall give notice to the lessee requiring him to pay the royalty or dead rent or remedy the breach, as the case may be, within sixty days from the date of the receipt of the notice and if the royalty or dead rent is not paid or the breach is not remedied within the said period, the State Government may, without prejudice to any other proceedings that may be taken against him, determine the lease and forfeit the whole or part of the security deposit."

**127.** Under Rule 27(5), if the lessee makes any default in the payment of the royalty or the payment of dead rent or commits breach of any of the conditions, the State Government shall give notice to the lessee and determine the lease and forfeit the whole or part of the security deposit. Whereas under Rule 45(iv), the said power has been vested in the lessor, which also indicates that it is the lessor, who will determine the lease and not the State Government. Other provisions of Chapter V also support the above conclusion. Rule 47 provides for submission of copy of licence or lease to the State Government within three months of the grant of such licence or lease. Requirement of submitting the licence or lease copy to the State Government indicates that the State Government is not the authority, who is granting the lease, otherwise there was no requirement of submitting a copy to the State Government, if it was contemplated that the State Government shall grant the lease. Rule 63 in Chapter V provides that previous approval of the Central Government was to be obtained through the State Government, which is to the following effect:

"**63. Previous approval of the Central Government to be obtained through State Government.**—Where in any case previous approval of the Central Government is required under the Act or these Rules, the application for such approval shall be made to the Central Government through the State Government."

**128.** Our above conclusion is reinforced when we look into the statutory regime regarding grant of mining lease as per the Mineral Concession Rules, which were in force prior to enforcement of the Mineral Concession Rules, 1960. Prior to the MMDR Act, 1957, earlier Central legislation which was governing the field was the Mines and Minerals (Regulation and Development) Act, 1948, under which rules have been framed by the Central Government, namely, the Mineral Concession Rules, 1949. Rule 14 of Chapter III contemplated application for prospecting licence. Chapter IV of

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a the 1949 Rules contained the heading “grant of mining lease in respect of land in which the minerals belong to the Government”. The provisions of Rule 27 of Chapter IV provide for application for mining lease and there were several other rules under Chapter IV, which in substance have been retained in Chapter IV of the 1960 Rules. Chapter V of the 1949 Rules contained the heading “grant of mineral concessions by private persons”. As noted above, the heading of Chapter V under the 1960 Rules is “procedure for obtaining a prospecting licence or mining lease in respect of land in which the minerals vest in a person other than the Government”. Rule 47 of Chapter V of the 1949 Rules provide for “conditions in a mining lease”, which are in substance similar as Rule 45 of the 1960 Rules. Rule 47(iv) of the 1949 Rules was akin to present Rule 45(i) of the 1960 Rules. Rule 47(iv) of the 1949 Rules is as follows:

c “47. *Conditions of mining lease.*—A mining lease granted by a private person shall be subject to the following condition:

\* \* \*

(iv) the provisions of clauses (i), (ii), (iii), (iv), (v), (vii), (viii), (ix), (x), (xi) and (xv) of sub-rule (1) of Rule 41 shall apply to such lease with the modification that in clauses (ii), (iii), (iv) and (xv) for the words “State Government” the word “lessor” shall be substituted;”

d 129. Thus, Chapter V of the 1949 Rules dealt with the mining lease granted by private persons i.e. the category where the minerals were not owned by the Government but were owned by private persons. Chapter V of the 1960 Rules contains substantially similar provisions. Thus, Chapter V of the 1960 Rules has to be treated to be dealing with minerals owned by private owners. The earlier statutory regime, which was enforced as per the 1949 Rules made it e amply clear that mineral concessions are to be granted by private persons also, which is in substance retained in Chapter V of the 1960 Rules. Thus, mining lease to be granted as per Chapter V of the 1960 Rules is mining lease by the owner of mineral and similar concept has to be borrowed and read in Chapter V as noted above. Absence of any procedure to make an application for mining f lease to the State Government in Chapter V of the 1960 Rules and lessor being the private persons and not the State Government, clearly indicates that the State Government is not to grant the lease in respect of land of privately owned/ community owned owners.

g 130. Another reason for not providing any application to the State Government for grant of mining lease in respect of minerals, which vests in the private owners and community owners is that without consent or willingness of private owners/community owners of minerals, no authority is empowered to grant any mining lease with regard to minerals, of which he is the owner. It is the owner of the minerals, may be private persons or community owners, who is entitled to grant lease of minerals as per the provisions of Chapter V of the 1960 Rules.

h 131. We, thus, conclude that as per the statutory provisions contained in the 1960 Rules especially Chapter V, a mining lease for minerals, which belongs to

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a a private owner or a community owner, it is not the State Government, which is entitled to receive any application or grant any mining lease, but it is the private owner or community owner, who is entitled to grant a lease for mining minerals owned by them. Issue 4 is answered accordingly.

**Point 5**

b **132.** Shri Shekhar Naphade, learned Senior Counsel appearing for the State of Meghalaya has submitted that the State of Meghalaya has no control over the mining of the coal by owners of the minerals since it is the owners, who have right to carry on mining, which has been traditionally going on in the State of Meghalaya for last several decades. To find out as to whether the State of Meghalaya has any statutory control over the mining operations in the State of Meghalaya, which is going on for last several decades, we have to examine the statutory provisions governing the field.

c **133.** We have already held that the provisions of the MMDR Act, 1957 and the Mineral Concession Rules, 1960 are applicable in the Hills Districts of the State of Meghalaya. We, in the present case, are concerned with the mining of coal, which is a major mineral as per the 1957 Act and the Mineral Concession Rules, 1960. Rule 42 of Chapter V of the 1960 Rules provides for restrictions on the grant of prospecting licence and mining lease, which is to the following effect:

d **“42. Restrictions on the grant of prospecting licence and mining lease.—**(1) No prospecting licence or mining lease shall be granted to any person unless he has filed an affidavit stating that he has—

- e (i) filed up-to-date income tax returns;  
(ii) paid the income tax assessed on him, and  
(iii) paid the income tax on the basis of self-assessment as provided in the Income Tax Act, 1961 (43 of 1961).

(2) Except with the previous approval of the Central Government, no prospecting licence or mining lease shall be granted in respect of any mineral specified in the First Schedule to the Act.”

f **134.** As per Rule 42(2), except with the previous approval of the Central Government, no prospecting licence or mining lease shall be granted in respect of any mineral specified in the First Schedule to the Act. Thus, previous approval of the Central Government is mandatory before grant of mining lease of coal. Rule 63 provides that the approval of the Central Government has to be obtained through the State Government. Thus, the State Government has to be aware that any previous approval of the Central Government for mining coal has been obtained or not. Thus, restriction being statutory and without any exception the State Government cannot say that it has no role to play with regard to mining of coal. All applications for previous approval of the Central Government have to be routed through the State Government.

g **135.** There are other rules in Chapter V itself, which provide for control of the State Government in the mining of coal. Rule 50 empowers the provision h

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a for prohibition of working of mines by the State Government, which is to the following effect:

**“50. Prohibition of working of mines.**—If the State Government has reason to believe that the grant or transfer of a prospecting licence or a mining lease or of any right, title or interest in such licence or lease is in contravention of any of the provisions of this Chapter, the State Government may, after giving the parties an opportunity to represent their views and with the approval of the Central Government, direct the parties concerned not to undertake any prospecting or mining operations in the area to which the licence or lease relates.”

b

c The above Rule empowers the State Government with the approval of the Central Government to direct the parties concerned not to undertake any mining operations, if it has reasons to believe that the grant or transfer of mining lease is in contravention of any of the provisions of Chapter V. Thus, when mining operations of coal are being conducted without prior approval of the Central Government, the State is not powerless to direct the parties not to undertake any prospective mining operations in the area. The power given under Rule 50 is not only enabling power, but is a statutory obligation on the State to exercise the power in the public interest.

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**136.** Rule 51 requires a mining lease to furnish to the State Government such returns and statements as may be prescribed. Rule 52 provides for penalty, which is to the following effect:

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**“52. Penalty.**—(1) If the holder of a prospecting licence or a mining lease or his transferee or assignee fails, without sufficient cause, to furnish the documents or information, or returns referred to in Rule 46, Rule 47, Rule 48, or Rule 51, or acts in any manner in contravention of Rule 49 or Rule 50, he shall be punishable with imprisonment for a term which may extend to one year or fine which may extend to five thousand rupees or with both.

f

(2) If any person grants or transfers or obtains a prospecting licence or mining lease or any right, title or interest therein, in contravention of any of the provisions of this Chapter, he shall be punishable with imprisonment which may extend to one year or fine which may extend to five thousand rupees or both.”

g

**137.** Rule 52 gives the State Government ample power to prosecute and punish mining leases or his transferees or assignees on violation of the rules or contravention of any of the provisions of Chapter V, which is ample power to the State to ensure that the Act is faithfully followed.

**138.** The State was advised by the Comptroller and Auditor General of India in its report ended 31-3-2013 in Para 4.5.1 to regulate mining by following the Mines and Minerals (Development and Regulation) Act, 1957. Para 7.5.8 of the same report has made the following as Recommendation 1:

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**“Recommendation 1.**—The M&G Department should take necessary measures to regulate mining in the State in accordance with the provisions of the MMDR Act and Rules thereunder.”

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**139.** The State is thus well aware of its statutory obligation which is reflected in Mining Policy of 2012 and Draft Guidelines, 2015 but still before this Court their contention that no mining lease is to be obtained for privately owned/community owned land in Hills Districts of the State of Meghalaya is unacceptable and not in a good spirit. Our country being governed by the Constitution of India all the States are to implement parliamentary Acts in true spirit and in the present case the State having been advised time and again by the Comptroller and Auditor General and being well aware of its statutory obligation as noticed above it comes ill from the State to contend before this Court that there is no requirement of mining lease for winning the minerals. The above stand of the State taken before this Court gives the impression that instead of implementing the parliamentary enactment and regulatory regime for mineral regulation some vested interests want to continue the illegal regime of illegal mining to the benefit of a few persons, which is unacceptable and condemnable. We, thus, conclude that the State of Meghalaya has jurisdiction and power to ensure that no mining of coal should take place except when a mining lease is granted under the Mineral Concession Rules, 1960, Chapter V, as discussed above.

**Point 6**

**140.** One more point which needs to be considered is as to whether power to allot land for mining purpose is vested in Autonomous District Council?

**141.** The submission on behalf of one of the Autonomous District Councils is, which is the appellant before us as well as on behalf of the State of Meghalaya, is that Autonomous District Council being constitutional authority constituted under Schedule VI of the Constitution has legislative and administrative power. Reference to various legislations framed by Autonomous District Council which received the assent of the Governor has also been relied on. Para 3 of Schedule VI enumerates the power of District Council and Regional Council to make laws which we have extracted above.

**142.** Certain legislation framed by the District Council has also been referred, namely, the Khasi Hills District (Trading by Non-Tribals) Regulations, 1954, the United Khasi Jaintia Hills Autonomous District (Management and Control of Forest) Rules, 1960. The Khasi Hills Autonomous District (Trading by Non-Tribals) Rules, 1959, all framed in exercise of power under Para 3 of the Sixth Schedule. The power to make law entrusted to Autonomous District Council under Para 3 of Schedule VI is power to make law referable to List 2 and List 3 of the Seventh Schedule. We have already noticed above that with regard to regulation and development of minerals, the Union has made declaration by Section 2 of the 1957 Act and the power of the State Legislature is denuded in that respect. The logical corollary of the above principle is that power of Autonomous District Council shall also be denuded insofar as regulation and development of minerals to the extent which is covered by the 1957 Act. We may refer to one Rule 4 of the United Khasi Jaintia Hills

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a District (Trading by Non-Tribals) Rules, 1959, which contemplates form of licence and one of the licences referred to is under Rule 4 is licence in Form E. Rule 4 is as follows:

**\*4. Form of Licence.**—(1)-(4) \* \* \*

b (5) Licence in Form ‘E’ shall be issued for the mining of minerals and the sale or purchase of minerals accruing from the autonomous district and for the import of minerals into the autonomous district for sale therein as specified in Part ‘E’ of the First Schedule on payment of prescribed licence fee subject to the conditions specified in the licence....”

c **143.** It is relevant to notice that the United Khasi Jaintia Hills District (Trading by Non-Tribals) Rules, 1959 has been repealed insofar as Jaintia Hills Districts are concerned by the Jaintia Hills Autonomous District (Trading by Non-Tribals) Regulation Act, 2011, Section 18. The 1959 Rules are still in force in Khasi Hills Autonomous Districts, since, no other regulations have been placed before us repealing the 1959 Rules. In the 2011 Regulations, one aspect needs to be noted in Section 2, which is the definition clause. By clause (viii), “trade” has been defined, which is to the following effect:

d **“2. (viii) “Trade”** means any trade involving buying and selling or business for profit and includes exchange of goods or commodities or business or import, export and transport of goods/commodities or entry of goods into market for sale or trade and business such as construction works or other work rendered by the contractor or his agent and it also includes person and persons engaged by such contractor or agent or any other profession or vocation such as barber, cobbler, tailoring, cattle rearing (which include e piggery, goatery, poultry) milk and dairy products, automobiles making or repairing, electrician, furniture makers, pharmacist, physician, transport and any other similar vocation or profession and the term “trade” and “trading” shall be construed accordingly.”

f **144.** The grant of licences contemplated by the Regulations are only with respect to the “trade” as defined in Section 2(viii). The entire Regulations do not refer to any kind of trade in mining of coal or mining operations. Thus, the 2011 Regulations have nothing to do with the mining of coal.

g **145.** Constitutional provisions of Schedule VI are also relevant to be noticed. Para 9 of Schedule VI refers to licences or leases for the purpose of prospecting for, or extraction of, minerals. Para 9 is as follows:

h **“9. Licences or leases for the purpose of prospecting for, or extraction of, minerals.**—(1) Such share of the royalties accruing each year from licences or leases for the purpose of prospecting for, or the extraction of, minerals granted by the Government of the State in respect of any area within an autonomous district as may be agreed upon between the Government of the State and the District Court of such district shall be made over to that District Council.

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(2) If any dispute arises as to the share of such royalties to be made over to a District Council, it shall be referred to the Governor for determination and the amount determined by the Governor in his discretion shall be deemed to be the amount payable under sub-paragraph (1) of this paragraph to the District Council and the decision of the Governor shall be final.”

a

**146.** Para 9(1) confines to the licences or leases of minerals granted by the Government of the State. Schedule VI which constitutes the District Councils and Regional Councils enumerates their powers. Para 9 refers to licences or leases for extraction of minerals granted by the Government of the State. Para 9 only deals with share of the royalties to District Councils as agreed upon between the Government of the State and the District Councils. Further Para 12-A(a) itself contemplates that any law made by the District Council or Regional Council which is repugnant to any law of the State shall be void. Thus, the status of law made by the District Council or Regional Councils has to give way to the law made by the State. There can be no doubt that the District Council and Regional Council cannot make any law which may be repugnant to the provisions of the parliamentary Act.

b

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**147.** We, thus, are of the view that District Council does not have any power to make any law with regard to grant of mining lease. The mining leases for winning the major minerals has to be granted in accordance with the 1957 Act and the Mineral Concession Rules, 1960.

d

**Points 7 and 8**

**148.** This Court in *State of T.N. v. Hind Stone*<sup>27</sup>, speaking through Chinnappa Reddy, J., has made the following weighty observations: (SCC pp. 212-13, para 6)

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“6. Rivers, forests, minerals and such other resources constitute a nation’s natural wealth. These resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way. It is in the interest of mankind. It is in the interest of the nation. It is recognised by Parliament. Parliament has declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals. It has enacted the Mines and Minerals (Regulation and Development) Act, 1957.”

f

**149.** No one can dispute the underlying object in the above observations of this Court. The use of natural resources also plays major role in carrying out development. A fine balance has to be maintained in utilisation of natural resources and its conservation and preservation. One cannot be sacrificed for the interest of other. The concept of sustainable development has been evolved and is being pursued. In this context, reference be made to the three-Judge

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*a* Bench judgment of this Court in *Lafarge Umiam Mining (P) Ltd. v. Union of India*<sup>28</sup>. In para 75, the following legal position was noticed: (SCC pp. 367-68)

*b* “75. Universal human dependence on the use of environmental resources for the most basic needs renders it impossible to refrain from altering the environment. As a result, environmental conflicts are ineradicable and environmental protection is always a matter of degree, inescapably requiring choices as to the appropriate level of environmental protection and the risks which are to be regulated. This aspect is recognised by the concepts of “sustainable development”. It is equally well settled by the decision of this Court in *Narmada Bachao Andolan v. Union of India*<sup>29</sup> that environment has different facets and care of the environment is an ongoing process. These concepts rule out the formulation of an across-the-board principle as it would depend on the facts of each case whether diversion in a given case should be permitted or not, barring “no go” areas (whose identification would again depend on undertaking of due diligence exercise). In such cases, the margin of appreciation doctrine would apply.”

*c* **150.** Now we come back to the order of NGT dated 17-4-2014<sup>6</sup> by which the Tribunal prohibited the rat-hole mining/illegal mining throughout the State of Meghalaya. We have noticed above that in OA No. 73 of 2014 wherein the above order was passed, sufficient materials were brought on the record including experts report which proved that illegal coal mining in the State of Meghalaya is degrading the environment. The Court also noticed the report of Professor Dr O.P. Singh which noticed that the Meghalaya Pollution Control Board in the year 1997 has submitted the report about the environmental pollution consequent to illegal mining.

*d* **151.** The learned Amicus Curiae has invited our attention to the report of the Comptroller and Auditor General for the year ending 31-3-2013, where the Comptroller and Auditor General has noticed that due to acid mine drainage several locations of Lukha River were severally polluted. The report also referred to investigation by the Meghalaya State Pollution Control Board in November 2011 and noticed that no effective steps were taken to control AMD. Para 7.5.23.1 of the report is as follows:

*e* “7.5.23.1. *Pollution of rivers due to acid mine drainage from coal mines*

*f* Based on media reports relating to pollution of Lukha River in Jaintia Hills, the Meghalaya State Pollution Control Board (MSPCB) conducted (November 2011) an investigation to ascertain the water quality of Lukha River and its feeding streams in Jaintia Hills District vis-à-vis a similar investigation carried out in February 2007. For this purpose, eight water

*g* *h* 28 (2011) 7 SCC 338

29 (2000) 10 SCC 664

<sup>6</sup> *All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307

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and sediment samples were collected from the same sampling locations investigated during 2007. The findings are as follows:

Table 1.6

Station	pH BIS norms 6.5-8.5		Iron(mg/l) BIS norms:0.3		Sulphate(mg/l) BIS norms:200.0	
	2007	2011	2007	2011	2007	2011
St.1	3.0	2.7	3.6	6.2	254.0	566.5
St.2	7.5	5.0	0.13	5.4	13.4	305.0
St.3	6.8	7.3	0.17	0.4	62.0	8.69
St.4	4.5	4.3	0.46	4.8	211.8	265.0
St.5	6.3	5.0	0.32	1.2	188.8	200.0
St.6	4.3	6.2	0.372	0.26	192.1	118.2
St.7	7.9	8.2	1.35	0.18	99.0	29.04
St.8	7.8	8.1	0.3	0.28	101.5	45.6

The water quality characteristics in terms of pH, sulphate and iron concentrations with respect to Stations 1, 2, 4 and 5 indicated that there is significant deterioration of water quality in comparison to that of the year 2007 the major cause of which was the AMD from coal mining in these areas.

The investigation made by MSPCB further revealed that the river water on the entire stretch of the sampling locations was not suitable for drinking purpose....”

**152.** The Tribunal being satisfied from the materials on record has issued the order dated 17-4-2014<sup>6</sup> which cannot be faulted in the facts and materials which are on record in the present case. One more fact in the above context needs to be noticed i.e. after the order dated 17-4-2014<sup>6</sup>, several applicants including the appellants in Civil Appeal No. 5272 of 2016 filed application for vacating the ban which was not acceded to by the Tribunal. Subsequently NGT permitted transportation of coal till 15-5-2016 and directed that after 15-5-2016, all coal within the State of Meghalaya shall vest in the State.

**153.** The Tribunal after considering all pleas and materials including reports submitted by the committees affirmed the order dated 17-4-2014<sup>6</sup> and refused to withdraw the ban. We do not find any error in the order of NGT reaffirming its ban order in the facts of the present case. But the question which has been raised by the appellant before this Court is that whether the complete ban as imposed by NGT deserves to be vacated or modified in the interest of the State and tribals. The revenue earned by the State from coal mining plays substantial part in the economy of the State. It is also amply demonstrated from the record that tribals are the owners of the land who carry on mining of coal in their land by which they earn their substantial livelihood.

<sup>6</sup> All Dimasa Students Union v. State of Meghalaya, 2014 SCC OnLine NGT 2307

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- 154.** Though as discussed above, the manner in which the mining is being carried out by the tribals cannot be approved which is clearly in violation of statutory regime under the 1957 Act and the 1960 Rules but in the event the mining is carried out by tribals or their assignees as per the provisions of the 1957 Act and the 1960 Rules, there can be no objections in carrying on such mining under the regulation and control of the State of Meghalaya. We thus clarify that in the event mining operations are undertaken by the tribals or other owners of Hills Districts of Meghalaya in accordance with mining lease obtained from the State of Meghalaya as per the 1957 Act and the Mineral Concession Rules, 1960, the ban order dated 17-4-2014<sup>6</sup> of the Tribunal shall not come in its way of carrying on mining operations. The ban order is for the illegal coal mining which was rampant in the State of Meghalaya and the ban order cannot be extended to valid and legal mining as per the 1957 Act and the 1960 Rules.

**Points 9 and 10**

- 155.** The appellants contend that NGT has no jurisdiction to constitute any committee. NGT vide its different orders has constituted different committees for submitting reports for different purposes. The constitution of which committees are sought to be challenged on the ground that NGT has no jurisdiction to constitute a committee. Similarly, order of the Tribunal directing for constituting a fund, namely, Meghalaya Environment Protection and Restoration Fund has been challenged on the ground that the Tribunal has no jurisdiction to constitute any fund.

- 156.** What are the powers and jurisdiction of the Tribunal given under the National Green Tribunal Act, 2010 has to be looked into to consider the above submission? Insofar as jurisdiction of the Tribunal is concerned, we have already noticed Sections 14, 15 and 16 of the Act. Section 19 of the Act deals with procedure and powers of the Tribunal. Section 19 which is relevant for the present case is as follows:

- “19. Procedure and powers of Tribunal.**—(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice.

(2) Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure.

(3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872.

(4) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person and examining him on oath;

<sup>6</sup> *All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307

- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of Sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decision;
- (g) dismissing an application for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any application for default or any order passed by it ex parte;
- (i) pass an interim order (including granting an injunction or stay) after providing the parties concerned an opportunity to be heard, on any application made or appeal filed under this Act;
- (j) pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule I;
- (k) any other matter which may be prescribed.

(5) All proceedings before the Tribunal shall be deemed to be the judicial proceedings within the meaning of Sections 193, 219 and 228 for the purposes of Section 196 of the Indian Penal Code and the Tribunal shall be deemed to be a civil court for the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.”

**157.** Sub-section (1) of Section 19 provides that the Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice. What sub-section (1) meant to convey is that the Tribunal is not shackled with the procedure laid down by CPC for conducting its proceedings. Sub-section (2) of Section 19 empowers the Tribunal with powers to regulate its own procedure. Section 19(2) confers wide powers on the Tribunal insofar as its procedure is concerned. Section 19(4) vests some powers as are vested in the civil court, while trying a suit, in respect of matters enumerated therein. The use of the expression “shall not be bound by the procedure laid down by CPC” is not akin to saying that procedure as laid down by CPC is in no manner relevant to the Tribunal. Further, Section 19(1) also does not mean that the Tribunal cannot follow any procedure given in CPC. One provision of CPC inserted by Act 104 of 1976 with effect from 1-2-1977 is Order 26, which is relevant for present inquiry. Order 26 Rule 10-A provides as follows:

**“10-A. Commission for scientific investigations.—**(1) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

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a (2) The provisions of Rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this Rule as they apply in relation to a Commissioner appointed under Rule 9.”

b **158.** Rule 10-A provides that where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, be conveniently conducted before the Court, the Court may, if it thinks necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court. Rule 10-A is enabling power to the courts to obtain report from such persons as it thinks fit when any question involves with the scientific investigation. The powers under Rule 10-A which are to be exercised by the Court can very well be used by NGT to obtain reports by experts. NGT as per the statutory scheme of NGT has to decide several complex questions pertaining to pollution and environment. The scientific investigation and report by experts are necessary requirements in appropriate cases to come to correct conclusion to find out measures to remedy the pollution and environment. We do not, thus, find any dearth of jurisdiction in NGT to appoint a committee to submit a report. We may further say that while asking an expert to give a report, c  
d NGT is not confined to the four corners of Rule 10-A rather its jurisdiction is not shackled by strict terms of Order 26 Rule 10-A as per Section 19(1) as noticed above.

e **159.** There is one more provision which throws considerable light on the above. Under Section 35 of the NGT Act, 2010 the Central Government is empowered to make rule for carrying out the provisions of the Act. Rules have been framed in exercise of powers under Section 35, namely, the National Green Tribunal (Practice and Procedure) Rules, 2011. The said Rules have been framed in exercise of powers under Section 4(4) as well as Section 35. The 2011 Rules are Rules also for practice and procedure of the Tribunal. Rule 24 which is relevant for the present case is as follows:

f **“24. Order and directions in certain cases.**—The Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its order or to prevent abuse of its process or to secure the ends of justice.”

g **160.** Rule 24 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends of justice. Rule 24 gives wide powers to the Tribunal to secure the ends of justice. Rule 24 vests special power to the Tribunal to pass orders and issue directions to secure the ends of justice. Use of words “may”, “such orders”, “gives such directions”, “as may be necessary or expedient”, “to give effect to its orders”, “order to prevent abuse of process”, are words which enable the Tribunal to pass orders and the above words confer wide discretion.

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**161.** Professor Justice G.P. Singh, in *Principles of Statutory Interpretation*, 14th Edn. while dealing with enabling words says:

“Ordinarily, the words ‘may’ and ‘it shall be lawful’ are not words of compulsion. They are enabling words and they only confer capacity, power or authority and imply discretion. ‘They are both used in a statute to indicate that something may be done which prior to it could not be done’. The use of words ‘shall have power’ also connotes the same idea.”

**162.** The enabling powers given to the Tribunal under Rule 24 are for the purpose and object to decide the subjects which are to be examined, decided and an appropriate relief is to be granted by the Tribunal. Further, subjects contain wide range of subjects which require technical and scientific inputs. The Tribunal can pass such orders as it may think fit necessary or expedient to secure the ends of justice.

**163.** The object for which the said power is given is not far to seek. To fulfil the objective of the NGT Act, 2010, NGT has to exercise a wide range of jurisdiction and has to possess wide range of powers to do justice in a given case. The power is given to exercise for the benefit of those who have right for clean environment which right they have to establish before the Tribunal. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. In this regard reference is made to the judgment of this Court in *L. Hirday Narain v. CIT*<sup>30</sup>, wherein this Court was examining provision empowering authority to do something. This Court laid down in para 14: (SCC p. 359)

“14. The High Court observed that under Section 35 of the Indian Income Tax Act, 1922, the jurisdiction of the Income Tax Officer is discretionary. If thereby it is intended that the Income Tax Officer has discretion to exercise or not to exercise the power to rectify, that view is in our judgment erroneous. Section 35 enacts that the Commissioner or Appellate Assistant Commissioner or the Income Tax Officer may rectify any mistake apparent from the record. If a statute invests a public officer with authority to do an act in a specified set of circumstances, it is imperative upon him to exercise his authority in a manner appropriate to the case when a party interested and having a right to apply moves in that behalf and circumstances for exercise of authority are shown to exist. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise power which is invested in aid of enforcement of a right—public or private—of a citizen.”

**164.** We, thus, are of the considered opinion that there is no lack of jurisdiction in NGT to direct for appointment of committee or to obtain a report from a committee in the given facts of the case.

**165.** Now coming to the challenge to the Fund which has been constituted by the Tribunal, namely, “Meghalaya Environment Protection and Restoration

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a Fund”, it is useful to notice the observation of the Tribunal in its order dated 25-3-2015<sup>3</sup> by which the said Fund was created. The reasons for constitution of Fund are self-explanatory which are to the following effect: (*All Dimasa Students Union case*<sup>3</sup>, SCC OnLine NGT)

b “It is also indisputable that there has been huge environmental degradation and pollution of the waterbodies in the State of Meghalaya, because of this illegal, unscientific mining. No one has even thought of restoration of the area in question, to bring to some extent, if not completely, restoration of ecology and environment in question. Serious steps are required to be taken for cleaning polluted waterbodies and ensure that no further pollution is caused by this activity and the activity which would be permitted to be carried on finally including transportation of coal. On the basis of “Polluter Pays Principle”, we direct that the State Government shall in addition to the royalty payable to it, shall also collect 10% on the market value of the coal for every consignment. Having heard the learned counsel appearing for the parties and keeping in view the Notifications of the Central Government dated 10-5-2012 and that of the State Government dated 22-6-2012, we may notice that in the report of the Comptroller and Auditor General of India for the period ending 31-3-2013 under 7.5.18 of Chapter 7 of which the invoice value of the coal has been taken as Rs 4850 per metric tonne. Thus, we direct that the State Government shall in addition to the royalty payable to it, also collect 10% of the said market value of the coal per metric tonne from each person. The amount so collected shall be deposited in the account to be titled as “Meghalaya Environment Protection and Restoration Fund” to be maintained by the State under the direct control of the Chief Secretary of the State of Meghalaya.

e This amount shall only be used for restoration of environment and for necessary remedial and preventive measures in regard to environment and matters related thereto.”

f **166.** As noticed above, NGT could have passed any order or direction to secure ends of justice which power is especially conferred by Rule 24 as noticed above, direction to constitute Fund is thus also saved under such power.

**Point 11**

g **167.** In respect of constitution of committee by the Tribunal there are two other limbs of submission; that, (1) NGT by constituting committees has delegated essential judicial power to the committee; (2) the constitution of committees encroaches on the constitutional scheme of administration of tribal areas under Article 244(2) read with the Sixth Schedule of the Constitution.

h **168.** The Tribunal vide its various directions has asked for reports from State officials and the committees. The various instances where NGT directed

<sup>3</sup> *All Dimasa Students Union v. State of Meghalaya*, 2015 SCC OnLine NGT 697

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for report or investigation and submission of report by committees were with the object of ensuring the implementation of the orders passed by it and to decide the environmental issues raised before it. In no manner constitution of committee can be said to be delegation of essential judicial powers of NGT to the committee.

**169.** Now, we come to the Katakey Committee which was constituted by the Tribunal on 31-8-2018<sup>1</sup>. In paras 14 and 15, the Tribunal while directing for constitution of Committee headed by Justice B.P. Katakey directed: (*Threat to Life Arising Out of Coal Mining case*<sup>1</sup>, SCC OnLine NGT)

“14. Only last question which remains is of restoration of the environment and rehabilitation of the victims for which funds are available. We are of the view that for this task, it will be appropriate that we constitute an independent Committee. This Committee will be headed by Justice B.P. Katakey, former Judge of the Guwahati High Court with representatives from Central Pollution Control Board and Indian School of Mines, Dhanbad.

15. The Committee will take the following steps:

- (i) Take stock of all actions taken so far in this regard.
- (ii) Prepare time-bound action plan to deal with the issue and ensure its implementation.”

**170.** The constitution of the Committee and its functions entrusted were with the object to implement the orders passed by the Tribunal. The Tribunal has already directed for preparing a scheme for the restoration of the environment and ecology. The environment and ecology restoration plan was submitted before the Tribunal along with the affidavit dated 3-10-2017 as has been noticed in the order dated 2-1-2018<sup>31</sup> of NGT. In the constitution of the Katakey Committee, thus, it cannot be said that essential judicial functions were delegated to the Committee by the Tribunal. For the restoration of environment NGT vide its order dated 31-8-2018<sup>1</sup> has directed the Committee to submit its action plan and reports by email. The Tribunal, thus, had kept complete control on all steps which were required to be taken by the Committee and issued directions from time to time. We, thus, do not accept the submission of the appellant that the essential judicial powers of NGT had been delegated to the Committee. Looking to the enormous work of restoration of environment which has to be supervised on the spot, the Committee was constituted. We, however, observe that the State is always at liberty to obtain particular direction if aggrieved by any act of the Committee. The matter being pending before the Tribunal of acts of the Committee are under direct control of the Tribunal and if the Committee oversteps in any direction the same can very well be corrected by the Tribunal on the matter being brought before it.

<sup>1</sup> *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241

<sup>31</sup> *All Dimasa Students Union v. State of Meghalaya*, 2018 SCC OnLine NGT 671

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171. Now, we come to the second limb, that the constitution of the
- a Committee encroaches the constitutional scheme of the tribal areas. We revert back to the Sixth Schedule of the Constitution. Para 3 of the Sixth Schedule enumerates the powers of the District Council and Regional Council to make laws. The powers of the District and Regional Councils are enumerated under para 3. In the directions of the Tribunal to constitute committee for transportation of extracted minerals or for preparing time-bound action to
- b deal with the restoration of environment and to ensure its implementation, there is no interference in the powers of the District or Regional Councils. Action plan for restoration of environment is consequence of the Tribunal finding out that an unregulated coal mining has damaged the environment and has caused the pollution including water pollution. It is not the case of the
- c appellant that the District and Regional Councils have framed any law for restoration of environment which is being breached by the committee or its acts. The District and Regional Councils are free to exercise all their powers and the Committee constituted by the Tribunal is only concerned with the environmental degradation and illegal coal mining. The Committee's report or direction of the Tribunal in no manner encroaches upon the administration of
- d tribal areas by the District and Regional Councils.

*Point 12*

172. NGT vide its order dated 4-1-2019<sup>4</sup> directed the State of Meghalaya to deposit an amount of Rs 100 crores with the Central Pollution Control Board, which was to be spent for restoration of environment. The State of Meghalaya aggrieved by the above direction has filed Civil Appeal No. 2968 of 2019.
- e We have already noticed the submission of Shri Amarendra Sharan, Senior Advocate.

173. Shri Colin Gonsalves, learned Amicus Curiae has refuted the submissions made by the learned counsel for the appellant. It is submitted that despite the specific ban on coal mining by order dated 17-4-2014<sup>6</sup> in the
- f entire State, illegal coal mining had been going on, which was proved from the reports and pictures referred to in the report. The State is responsible and *constitutionally obligated* to provide clean environment to every citizen. They having entirely failed to *stop* the illegal mining, which is cause of degradation of pollution including pollution of river streams, the Tribunal has rightly directed the State of Meghalaya to deposit Rs 100 crores. Shri Gonsalves submits that in
- g spite of State Pollution Control Board as well as Comptroller Auditor General having invited the attention of the State of Meghalaya towards serious pollution especially in the river water, no steps were taken by the State of Meghalaya. It is further submitted that restoration of environment requires carrying out various projects and unless the State provides for necessary fund and finances,

h <sup>4</sup> *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2019 SCC OnLine NGT 105

<sup>6</sup> *All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307

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the restoration of damaged environment cannot be undertaken. It is further submitted that the State had collected huge fund of Rs 4,33,07,26,731, which amount had not been spent by the State, although, it was required to take steps for restoration of environment. a

174. NGT vide its order dated 31-8-2018<sup>1</sup> constituted a committee headed by Justice B.P. Katakey, former Judge of the Gauhati High Court with representatives from Central Pollution Control Board and Indian School of Mines, Dhanbad. By subsequent order dated 19-9-2018<sup>32</sup> issued by the Tribunal, additional Chief Secretary to Government of Meghalaya was made the Member Secretary/Coordinator for proper functioning of the Committee. The Committee visited different sites, held various meetings, various presentations were also made before the Committee by Meghalaya State Pollution Control Board and other bodies, namely, North-Eastern Centre for Technology Application and Reach, North-Eastern Space Application Centre. In Para 12(g), the following has been stated by the Committee: b

“12. (g) Presentation was also made by the Meghalaya State Pollution Control Board on the coalmine activities and its impact on the land used, water quality, air quality, ecology as well as socio-economic impact. The Committee, on the basis of the said presentation, found the following: c

(i) Continuation of coalmine activities for a long time in an unplanned and unscientific manner as well as without any pollution control measures. d

(ii) Such mining activities are generating huge ecological disturbances and negative environmental impacts.

(iii) Water in rivers and streams in the mining areas has become highly acidic in nature with pH value of 2.7 since 1991-92 due to presence of high percentage of sulphur in coal, which reacts after mixing with oxygen in air and water giving rise to AMD problem. No difference of pH level of water in rivers, streams and mine drains have been noticed during monsoon. e

(iv) pH level of water in springs, tap water and hand pumps also found to be less than permissible limit of drinking water standards. f

(v) Absence of biological life in the water bodies.

(vi) Ambient air quality of the coal mining areas and coal storage areas exceeds the National Ambient Air Quality Standards on few occasions.

(vii) Requirement of urgent steps to be taken to generate social awareness about the adverse environmental impacts and the health hazards associated with unplanned and unscientific coal mining activities.” g

1 *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241 h

32 *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1243

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**175.** Action plans for restoration of environment were also discussed and finalised.

**176.** On detailed discussion on Issue (A), the Committee with details including photographs and maps observed the following:

“(vi) From the aforesaid materials available before the Committee, it is, therefore, evident that the coal mining activities, which includes the extraction of coal and transportation, is going on in the State of Meghalaya, at least in East Jaintia Hills District, where such mining activities are most, despite the ban imposed by the Hon’ble NGT vide its order dated 17-4-2014<sup>6</sup>. Very sincere and honest efforts are required on the part of the State Government to stop the mining activities, which are going on. Such mining activities are going on without adopting any safety measures for the workers and without caring for adverse environmental effect. A sincere desire to stop such illegal mining activities is also necessary on the part of the State and Central Government agencies for implementation and monitoring of health, safety and environmental regulations.

“(vii) The result of ongoing un-abetted illegal mining, despite the ban imposed by NGT, is the very tragic incident that occurred very recently on 13-12-2018 in a coalmine in Ksan Village near Lytein River under Saipung Police Station in East Jaintia Hills District, where 15 (fifteen) coalmine workers were reported trapped, while they were working in the mine. Unfortunately, none of them so far could be rescued. For the said incident, Saipung Police Station Case No. 15(12)/2018 under Sections 188/304-A/34 IPC read with Section 3(2)(d) of the PDPP Act and Section 21(1) of the MMDR Act against the coalmine owner has been registered. A magisterial enquiry to find out the facts and circumstances leading to the said incident, has also been directed.”

**177.** The fact that on 13-12-2018, 15 coalmine workers were trapped in an ongoing coal mining operation, who all have been reported to be dead itself proves beyond any shade of doubt that order dated 17-4-2014<sup>6</sup> banning mining in the entire State of Meghalaya was neither enforced nor were serious endeavours taken by the State or its authorities to save the environmental pollution. With regard to restoration of the environment and restoration of the victims, action plans were formulated by the Committee.

**178.** The first submission raised by Shri Amarendra Sharan challenging the order is violation of principles of natural justice. The report dated 31-12-2018 of the Committee itself in Issue (f)(iv) noticed:

“Website has been opened and all the proceedings of the Committee are uploaded in the said website.”

**179.** The report being placed on website on 31-12-2018 itself, there is no question of serving copy of the report of the Committee to the stakeholders. It is

<sup>6</sup> All Dimasa Students Union v. State of Meghalaya, 2014 SCC OnLine NGT 2307

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further relevant to notice that the Additional Chief Secretary of the Government of Meghalaya was himself the Member Secretary and Coordinator of the Committee under the orders of the Tribunal dated 19-9-2018<sup>32</sup>. All proceedings of the Committee, its meetings and minutes, were with the knowledge and participation of the Coordinator/Additional Chief Secretary of the State of Meghalaya.

**180.** A perusal of the order dated 4-1-2019<sup>4</sup>, which is impugned in the appeal indicates that although the learned counsel for the State of Meghalaya was present and was heard but no kind of objection was raised regarding acceptability of the report. The report obtained by NGT through the Committee was to take effective steps towards protection of environmental pollution and for restoration of damaged environment. Pollution of the various rivers and streams and steps for treating the acidic water were urgently required. Several presentations before the Committee were also made and different steps regarding restoration of environment were to be taken as noticed and indicated in the report of the Committee. As noticed above, NGT vide its order dated 25-3-2015<sup>3</sup> constituted a fund, namely, "Meghalaya Environment Protection and Restoration Fund" to be maintained by the State under the direct control of the Chief Secretary of the State of Meghalaya. It is reiterated in the report of the Committee that an amount of Rs 433 crores is already lying in the said fund, which has not been spent.

**181.** The learned counsel for the appellant has laid much emphasis that there had been no calculation of the extent of damage nor could the Tribunal have arrived at on the amount of damages to the extent of Rs 100 crores, which was directed to be deposited by the State of Meghalaya with the Central Pollution Control Board.

**182.** We are of the view that the amount, which has been directed by NGT to be deposited by the State of Meghalaya is neither a penalty nor a fine imposed on the State. The amount has been directed to be deposited for carrying out steps regarding restoration of environment. We further agree with the submission of the learned counsel for the appellant that the said amount cannot be said to be amount of damages to be paid by the State. We further find force in the submission of the learned counsel for the appellant that the State of Meghalaya has very limited source of revenue and putting an extra burden on the State of Meghalaya to make payment of Rs 100 crores from its own financial resources and budgetary amount may cause great hardship to the State of Meghalaya. Ends of justice will be served in modifying the direction of NGT dated 4-1-2019<sup>4</sup> to the extent that the State is permitted to transfer an amount of Rs 100 crores from the amount lying in the MEPRF to the Central Pollution Control Board. The Central Pollution Control Board as directed by the Tribunal

<sup>32</sup> *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1243

<sup>4</sup> *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2019 SCC OnLine NGT 105

<sup>3</sup> *All Dimasa Students Union v. State of Meghalaya*, 2015 SCC OnLine NGT 697

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a (NGT) shall utilise the aforesaid amount of Rs 100 crores only for restoration of the environment. The appeal is thus, partly allowed to the above extent.

**Point 13**

b **183.** Vide order dated 31-3-2016<sup>11</sup>, NGT had permitted transportation of coal till 15-5-2016 under the terms and conditions as enumerated therein. The order dated 31-3-2016<sup>11</sup> further contemplated that no coal in any form whatsoever shall be permitted to be transported after 15-5-2016 on which date the entire remaining coal shall vest in the State Government and shall be disposed of in accordance with law.

c **184.** The main grievance of the appellant is that NGT could not have directed for vesting of coal in the State. The submission is that members of the appellant association have proprietary rights in the coal with which they could not be divested by the Tribunal. We have already held that private owners of the land are also owners of the minerals and the minerals belong to the owners/tribals. We have also found that coal mining was illegally going on unregulated by any statutory law in the Hills Districts of the State of Meghalaya without there being any mining lease. The entire mining was, thus is clear, in contravention of Section 4(1) of the 1957 Act which attracted penalties under  
d Section 21.

**185.** Section 21 of the Act is as follows:

e “**21. Penalties.**—(1) Whoever contravenes the provisions of sub-section (1) or sub-section (1-A) of Section 4 shall be punishable with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees per hectare of the area.

f (2) Any rule made under any provision of this Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

g (3) Where any person trespasses into any land in contravention of the provisions of sub-section (1) of Section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the land.

h (4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

<sup>11</sup> *All Dimasa Students Union v. State of Meghalaya*, 2016 SCC OnLine NGT 422

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(4-A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

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

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(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable.”

**186.** The mining of coal in contravention of Section 4(1) invites penalties as enumerated in Section 21. The present is not a case where any kind of penalty has been imposed on the miners except that the amount of royalty as payable on mining of coal is being collected by the State as penalty. It is true that the State Government has power under Section 21(5) to recover from such person the minerals so raised, or, where such material has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, but it is for the State Government to exercise its power under Section 21(5) by way of penalty. NGT has not given any reason as to how coal shall automatically vest in the State. The right of recovery of mineral as contemplated under Section 21(5) does not amount to say that proprietary right of owner of the minerals is lost, rather, the State under Section 21(5) exercises its power to recover the mineral which has been raised without any lawful authority. We, thus, are of the view that coal extracted and lying in open after 15-5-2016 was not automatically vested in the State and the owner of the coal or the person who has mined the coal shall have the proprietary right in the mineral which shall not be lost.

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**Point 14**

**187.** Several IAs have been filed by different applicants seeking direction to transport already extracted coal lying at different places in Hills Districts of the State of Meghalaya. Different applicants may claim to different quantities of coal situate at different places. By our order dated 10-5-2019<sup>15</sup>, we have already permitted transportation of balance coal to the extent of 75,050 MT for which challans were already issued after the order of this Court dated 4-12-2018<sup>16</sup>. The above quantity of said 75,050 MT was balance quantity out of 1,76,655 MT, for transportation of which order was passed by this Court on 4-12-2018<sup>16</sup>. In addition to the aforesaid quantity, claim with regard to different quantities by different applicants has been laid. It is not necessary for the purpose

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<sup>15</sup> *Lber Laloo v. All Dimasa Students Union*, (2019) 16 SCC 317 : 2019 SCC OnLine SC 698

<sup>16</sup> *Lber Laloo v. All Dimasa Students Union*, 2018 SCC OnLine SC 3330

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of the present case to notice different quantities and claims of different persons for transportation. After the order of NGT dated 31-8-2018<sup>1</sup>, the State of Meghalaya has constituted committees to assist the Commissioner and Secretary, Mining and Geology to prepare a separate inventory with regard to coal not so far recorded in the inventory available with NGT. In pursuance of the said direction, as contained in para 13 of the order, steps were taken and various committees had made certain assessments with regard to different quantities of coal lying in four Hills Districts of the State of Meghalaya. The Katakey Committee Report dated 31-12-2018 has in chart noticed the different quantities as was informed by letter dated 13-11-2018 to the Commissioner and Secretary to the Government of Meghalaya. While dealing with Issue 3, in Paras (iii), (iv) and (v), the following has been stated:

“(iii) The Commissioner & Secretary to the Government of Meghalaya, Mining & Geology Department, in the ATR submitted on 13-11-2018 has stated about the availability of 1,76,655 MT of already inventorised coal for transportation, which has also been reflected in the order dated 4-12-2018<sup>16</sup> passed by the Hon’ble Supreme Court. The Commissioner & Secretary, in the said ATR, has also stated that 23,25,663.54 MT of coal, other than those inventorised coal, remained un-inventorised and available for transportation, district-wise break up of which is as follows:

“Report on extracted coal reflected as unassessed or nil in the inventory approved by NGT

Sl. No.	Name of district	Declared quantity in MT	Assessed quantity in MT
1.	East Jaintia Hills District	15,46,687.00	13,22,379.00
2.	West Khasi Hills District	7,29,757.00	7,78,297.99
3.	South-West Khasi Hills District	1,25,600.63	2,14,145.55
4.	South Garo Hills District	12,834.00	10,841.00
<i>Total</i> :		24,14,878.63	23,25,663.54”

(iv) From the aforesaid district-wise break-up of extracted coal, which was un-inventorised, it appears that the quantity of such coal was highest in East Jaintia Hills District, where the Deputy Commissioner, as noticed above, has admitted ongoing coal mining activities despite the ban imposed by the Hon’ble NGT vide order dated 17-4-2014<sup>6</sup>. The stand of the

<sup>1</sup> *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241

<sup>16</sup> *Lber Laloo v. All Dimasa Students Union*, 2018 SCC OnLine SC 3330

<sup>6</sup> *All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307

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Government that the quantity of coal, as reflected in the aforesaid chart was mined prior to the said ban, appears to be not acceptable, in view of the aforesaid admission of the Deputy Commissioner and also what the Committee has noticed during its field visit on 12-11-2018. It seems that there is an attempt to show the freshly mined coal i.e. the coal mined after the ban imposed by the Hon'ble NGT, as the coal left out from the assessment and remained un-inventorised though mined prior to the said ban. The Committee also apprehends that such freshly mined coal may be transported taking advantage of the order dated 4-12-2018<sup>16</sup> passed by the Hon'ble Supreme Court.

(v) The Hon'ble NGT vide its order dated 31-8-2018<sup>1</sup> given the responsibility of going through the said issue to the Secretary of Mining, State of Meghalaya in the first instance and to be cross-checked by the Joint Team of representatives of the Central Pollution Control Board and India School of Mines, Dhanbad. As reported, no such cross-check has so far been made."

**188.** The State of Meghalaya has filed additional affidavit dated 6-4-2019 of the Commissioner and Secretary to the Government of Meghalaya, Mining and Geology Department, where details of assessments made by committees appointed by the State of Meghalaya have been brought on the record. In the affidavit, it has also been stated that a Technical Committee was also constituted to perform the verification of the assessments made by the Deputy Commissioners of respective districts. As per the affidavit, assessment of extracted coal stocks in above four districts is 32,56,715 MT whereas in the report submitted by the Katakey Committee, the said figure in the above four districts is 23,25,663.54 MT. The Technical Committee submitted their report, which has been brought on the record along with the additional affidavit verifying the assessed quantities. In the affidavit of the Commissioner and Secretary, it has also been sated that the Technical Committees have submitted that it is difficult to define with certainty that which coal was mined prior to ban in 2014 and mined after 2014. From the above, it is clear that the State Government itself has come with a case that huge quantity of coal in the four Hills Districts, which has been extracted, is lying waiting for orders of transportation. The learned Amicus Curiae and Shri Nidhesh Gupta, learned Senior Counsel have refuted the claim made by the applicants as well as the State of Meghalaya. It is submitted by the learned Amicus Curiae that in fact the State is not making any effort to stop the illegal mining, in spite of the ban of 17-4-2014<sup>6</sup>, illegal mining of coal has been permitted and now such illegally mined coal has also been assessed and the State also supports the claim

<sup>16</sup> *Lber Laloo v. All Dimasa Students Union*, 2018 SCC OnLine SC 3330

<sup>1</sup> *Threat to Life Arising Out of Coal Mining in South Garo Hills District v. State of Meghalaya*, 2018 SCC OnLine NGT 1241

<sup>6</sup> *All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307

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a of transportation of the applicants in the guise that coal lying in open is an environmental hazard.

b **189.** Shri Nidhesh Gupta, learned Senior Counsel appearing for private respondents in CA No. 5272 of 2016 has submitted that the State auctioned coal on a meagre price, whereas market rate of the coal is approximately Rs 10,000 per MT. In the present case, we have noticed that illegal coal mining is going on in spite of ban by NGT by its order dated 17-4-2014<sup>6</sup>. The Katakey Committee Report has also opined that all the extracted coal lying in different districts is coal, which has been illegally mined after the imposition of ban by the order dated 17-4-2014<sup>6</sup>. All coal being illegally mined, the State is fully entitled to impose a penalty i.e. to realise the royalty and the amount of MEPR Fund. The coal being major mineral and useful for different industries and projects, appropriate disposal of extracted coal is also of paramount importance.

c **190.** We accept the suggestion of the learned Amicus Curiae that entire extracted coal lying at various places be directed to be taken over by Coal India Ltd., a Government of India unit, who may dispose of the same as per its normal method of disposal and proceeds be distributed as per directions issued by this Court hereinafter. NGT has already directed that for all extracted coal lying at different places, it is the State, which is the receiver-cum-custodian of the coal. The State having carried out the assessment of the coal lying in the aforesaid four districts including the details of the quantities and the details of owners being available with it, it may ensure that the entire coal is handed over to Coal India Ltd., as per the mode and manner to be formulated by the Katakey Committee, in consultation with officers of Coal India Ltd. and the State of Meghalaya.

d **191.** The Katakey Committee and its various members and participants have done a commendable job in studying and examining various aspects of environment in the State of Meghalaya and several valuable suggestions have been given by the Committee, which are also being implemented to mitigate the suffering of the citizens consequent to the illegal coal mined.

e **192.** We direct that the Commissioner and Secretary of the State in the Department of Mining and Geology along with the officers of Coal India Ltd. may deliberate with the Katakey Committee to finalise a comprehensive plan for transportation and handing over of the coal to Coal India Ltd. for disposal/ auction as per rules of Coal India Ltd. Disposal/auction by Coal India Ltd. shall be beneficial to both the owners of the mines as well as to the State of Meghalaya. Receiving fair value of the coal should be a concern of both the owners and the State. It is for Coal India Ltd. to decide as to venue, where they shall receive the coal i.e. either at any of its depot or any other place in the State of Meghalaya and it is for Coal India Ltd. to finalise the process of disposal

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<sup>6</sup> *All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307

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and auction of the coal. It goes without saying that it shall be the duty of the State of Meghalaya and its officers, especially the Deputy Commissioner of the area concerned to enter details of quantity of the coal, name of the owner and place from where it is collected. Coal India Ltd. shall also take steps to ensure weighment of the coal when it is received by it and since all consequent steps regarding disposal, price grade of the coal shall be determined as per the weight of the coal received by Coal India Ltd. from different places. The expenses of transportation shall be borne by the State of Meghalaya, Coal India Ltd. or by both, which expenses shall be deductible from the price received of the coal. The State of Meghalaya shall be entitled to royalty and payment towards MEPR Fund as well as taxes out of the price of the coal. After deduction of cost of transportation, the payment of royalty and payment to MEPR Fund and taxes plus 10% of value of the coal to be given to Coal India Ltd. for the above exercise, balance amount shall be disbursed to the owner of the coal towards its price, which disbursement shall be the responsibility of the State. Coal India Ltd. after taking its expenses for transportation with 10% of price of the coal shall remit the entire amount to the State and it is for the State after deducting the royalty and payment to the MEPR Fund and taxes to pay back the balance of the amount to the owner.

**193.** Another aspect of the matter is also to be noticed. The coal, which has been seized by the State in illegal transportation or illegal mining for which different cases have been registered by the State, is not to be dealt with as directed above. The said seized coal shall be dealt with by the State in accordance with Section 21 of the 1957 Act and on being satisfied, the State can take a decision to recover the entire quantity of coal so illegally raised without lawful authority and the said cases have to be separately dealt with in accordance with law.

**194.** We, thus, are of the view that all IAs filed by different applicants seeking order of transportation of the different quantities stand disposed of in view of the directions as given above. Let the Katakey Committee in consultation with the State of Meghalaya and officers of Coal India Ltd. finalise appropriate mode and manner to effect the transport and disposal of the coal in the above manner.

### **Conclusions**

**195.** From the foregoing discussions we arrived at the following conclusions:

**195.1.** The application OA No. 73 of 2014 has clearly made out allegations which were sufficient for the Tribunal to exercise its jurisdiction as conferred by Section 14 of the National Green Tribunal Act, 2010. Both the component as appearing in sub-section (1) of Section 14, that is (i) substantial question relating to environment, and (ii) such question arises out of the implementation of the enactments specified in Schedule I, were present.

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- 195.2.** The allegations of the applicant of OA No. 73 of 2014 of environmental degradation by illegal and unregulated coal mining were fully proved from materials on the record including the report of the experts, report of the Meghalaya State Pollution Control Board, the report of the Katakey Committee, which all proved environmental degradation of water, air and surface.
- 195.3.** The stand taken on behalf of the State of Meghalaya before this Court that the Tribunal has no jurisdiction cannot be approved. The State Government is under constitutional obligation to ensure clean environment to all its citizens. In cases pertaining to environmental matter, the State has to act as facilitator and not as obstructionist.
- 195.4.** According to the land tenure system as applicable in the Hills Districts of the State of Meghalaya, most of the lands are either privately or community owned in which the State does not claim any right. The private owners of the land as well as community owners have both the surface right as well as subsoil rights.
- 195.5.** Para 12-A sub-clause (b) of the Sixth Schedule of the Constitution empowers that the President may, with respect to any Act of Parliament, by notification, direct that it shall not apply to an autonomous district or an autonomous region in the State of Meghalaya, or shall apply to such district or region or any part thereof subject to such exceptions or modifications as he may specify in the notification. No notification has been issued by the President under Para 12-A(b). There is nothing in the Sixth Schedule of the Constitution which may indicate about the inapplicability of the 1957 Act with regard to the Hills Districts of the State of Meghalaya.
- 195.6.** There is nothing in Section 4(1) of the 1957 Act to indicate that restriction contained in Section 4(1) does not apply with regard to privately owned/community owned land in Hills Districts of Meghalaya. Further, words “any area” under Section 4(1) also have significance which does not have any exception. Further phrase “except under and in accordance with terms and conditions with a mining lease granted under the Act” are also significant which make the intent and purpose of prohibition clear and loud.
- 195.7.** The statutory scheme delineated by Section 13(2)(f) and the Mineral Concession Rules, 1960 clearly contemplate grant of mining lease, with regard to both the categories of land i.e. land in which minerals vest in the Government, and the land in which minerals vest in a person other than the Government.
- 195.8.** The Mines Act, 1952 contains various provisions regarding inspection of mining operation and management of mines. The provisions of the Mines Act, 1952 are mandatory to be followed before working a mine. The regulations, namely, the Coal Mines Regulations, 2017 also contain several regulatory provisions which need to be followed while working a mine by a

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mining leaseholder. The enforcement of the Mines Act, 1952 and the 2017 Regulations have to be ensured by the State in the public interest.

**195.9.** As per statutory regime brought in force by Notification dated 15-1-2016 issued under the Environment (Protection) Act, 1986, environmental clearance is required for a project of coal for mining of any extent of area. While implementing statutory regime for carrying on mining operations in the Hills Districts of the State of Meghalaya, the State of Meghalaya has to ensure compliance of not only the MMDR Act 1957, but the Mines Act, 1952 as well as the Environment (Protection) Act, 1986.

**195.10.** In Hills Districts of the State of Meghalaya for carrying coal mining operations in privately owned/community owned land it is not the State Government which shall grant the mining lease under Chapter V of the 1960 Rules, but it is the private owner/community owner of the land, who is also the owner of the mineral, who shall grant lease for mining of coal as per the provisions of Chapter V of the 1960 Rules after obtaining previous approval of the Central Government through the State Government.

**195.11.** The State of Meghalaya has ample power and jurisdiction under the 1957 Act and the 1960 Rules to check, control and prohibit coal mining operations in the Hills Districts of the State of Meghalaya.

**195.12.** The Union having made declaration by Section 2 of the 1957 Act taking under its control regulation and development of mineral, the power of Autonomous District Council to legislate on the subject shall also be denuded as that of the State Legislature.

**195.13.** In event the mining is carried out by a mining leaseholder as per the provisions of the 1957 Act and the 1960 Rules with an approved mining plan there can be no objections in carrying of such mining operations under the regulation and control of the State of Meghalaya. We clarify that in the event mining operations are undertaken in privately owned/community owned land in Hills Districts of Meghalaya in accordance with mining lease with approved mining plan as per the 1957 Act and the Mineral Concession Rules, 1960, the ban order dated 17-4-2014<sup>6</sup> of the Tribunal of the NGT shall not come in the way of carrying on mining operations.

**195.14.** Under Order 26 Rule 10-A of the Civil Procedure Code, a court can appoint a commission for scientific investigation. The power which can be exercised by a court under Order 26 Rule 10-A CPC can very well be exercised by the NGT also. The NGT while asking expert to give a report is not confined to the four corners of Rule 10-A and its jurisdiction is not shackled by strict terms of Order 21 Rule 10-A by virtue of Section 19(1) of the NGT Act.

**195.15.** Rule 24 of the National Green Tribunal (Practice and Procedure) Rules, 2011 empowers the Tribunal to make such orders or give such directions as may be necessary or expedient to give effect to its order or to secure the ends

<sup>6</sup> *All Dimasa Students Union v. State of Meghalaya*, 2014 SCC OnLine NGT 2307

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a of justice. The power given to the Tribunal is coupled with duty to exercise such powers for achieving the objects. There is no lack of jurisdiction in NGT in directing for appointment of a committee and to obtain a report from a committee.

**195.16.** The direction to constitute a fund, namely, “Meghalaya Environment Protection and Restoration Fund”, is also saved under the above power.

b **195.17.** NGT by directing for constitution of committee has not delegated essential judicial functions. The Tribunal had kept complete control on all steps which were required to be taken by the committees and has issued directions from time to time. The State is always at liberty to obtain appropriate directions if aggrieved by any act of the committee. The matter being pending before the Tribunal all acts of the committee are under direct control of the Tribunal and  
c if the committee oversteps in any direction the same can very well be corrected by the Tribunal on the matter being brought before it.

**195.18.** NGT by issuing direction to constitute the committee for transportation of the extracting mineral, for preparing time-bound action plan to deal with the restoration of environment and to ensure its implementation  
d does not in any manner interfere with the powers of the District or Regional Councils. The District and Regional Councils are free to exercise all their powers and committee constituted by the Tribunal is only concerned with the environmental degradation and illegal coal mining. The committees report or direction of the Tribunal in no manner encroaches upon the administration of tribal areas by the District and Regional Councils.

e **195.19.** The amount which has been directed by NGT to be deposited by the State of Meghalaya is neither a penalty nor a fine imposed on the State of Meghalaya. We accept the submissions of the learned counsel for the appellant that the State of Meghalaya has very limited source of finances and putting an extra burden on the State of Meghalaya to make payment of Rs 100 crores from  
f its own financial resources may cause great hardship to the State of Meghalaya. Ends of justice be served in modifying the direction of NGT dated 4-1-2019<sup>4</sup> to the extent that the State is permitted to transfer an amount of Rs 100 crores from the amount lying in MEPRF to the Central Pollution Control Board. The Central Pollution Control Board as directed by the Tribunal shall utilise the aforesaid amount of Rs 100 crores only for restoration of the environment in  
g the State of Meghalaya.

**195.20.** The coal extracted and lying in open after 15-5-2016 does not automatically vest in the State of Meghalaya and the owner of the coal or the person who has mined the coal shall have the proprietary right in the mineral which shall not be lost.

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**195.21.** The suggestion of the learned Amicus Curiae that entire extracted coal lying at various places in Hills Districts of Meghalaya be directed to be taken over by Coal India Ltd. is accepted. Coal India Ltd. may dispose of the same as per its normal method of disposal and proceeds be dealt with as per directions issued. a

**195.22.** The State having carried out the assessment of the coal lying in the aforesaid four districts including the details of the quantities and the details of owners being available with it, it may ensure that entire coal is handed over to Coal India Ltd., as per the mode and manner to be formulated by the Katakey Committee in consultation with officers of Coal India Ltd. and the State of Meghalaya. b

**195.23.** It is for Coal India Ltd. to decide as to venue, where they shall receive the coal i.e. either at any of its depot or any other place in the State of Meghalaya and it is for Coal India Ltd. to finalise the process of disposal and auction of the coal. It shall be the duty of the State of Meghalaya and its officers especially the Deputy Commissioner of the area concerned to enter details of quantity of the coal, name of the owner and place from where it is collected. All concerned shall take steps to ensure weighment of the coal when it is received by Coal India Ltd. c

**195.24.** The expenses of transportation shall be borne by the State of Meghalaya, Coal India Ltd. or by both, which expenses shall be deductible from the price received of the coal. The State of Meghalaya shall be entitled to royalty and payment towards MEPR Fund as well as taxes out of the price of the coal. After deducting its expenses for transportation with 10% of price of the coal, Coal India Ltd. shall remit the balance amount to the State and it is for the State after deducting the royalty and payment to the MEPR Fund and taxes to pay back the balance amount to the owner. d

**195.25.** The coal which has been seized by the State in illegal transportation and illegal mining for which different cases have been registered by the State, is not to be dealt with as directed above. The seized coal shall be dealt with by the State in accordance with Section 21 of the 1957 Act and on being satisfied, the State can take a decision to recover the entire quantity of coal so illegally raised without lawful authority. e

**196.** In view of the foregoing discussions and conclusions, all these appeals are decided in the following manner: f

**196.1.** Civil Appeal No. 10720 of 2018, Civil Appeal No. 10611 of 2018, Civil Appeal No. 10907 of 2018 and Civil Appeal No. ... of 2019 (arising out of Civil Appeal Diary No. 3067 of 2018) are dismissed subject to declaration and clarification of law as made above. g

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**196.2.** Civil Appeal No. 5272 of 2016 is allowed setting aside the order of NGT dated 31-3-2016<sup>11</sup> to the extent it declared that all extracted coal after 15-5-2016 shall vest in the State of Meghalaya.

**196.3.** Civil Appeal No. 2968 of 2019 is partly allowed permitting the State of Meghalaya to transfer the amount of Rs 100 crores to the Central Pollution Control Board from the Meghalaya Environment Protection and Restoration Fund which amount shall be used by Central Pollution Control Board only for restoration of environment.

**196.4.** All IAs seeking direction for transportation of coal are disposed of directing:

**196.4.1.** All extracted coal as assessed by the State of Meghalaya lying in different districts of the State of Meghalaya which as per order of NGT is in custody of the State of Meghalaya shall be handed over to Coal India Ltd. for proper disposal.

**196.4.2.** The Katakey Committee after discussion with Coal India Ltd. and the State of Meghalaya shall formulate a mechanism for transport, weighment of all assessed coal.

**196.4.3.** Coal India Ltd. shall auction the coal so received by it as per its best judgment and remit the proceed to the State to the extent as directed above.

**196.4.4.** All coal seized by the State for which cases have already been registered shall be dealt with by the State in accordance with Section 21 of the 1957 Act.

**197.** Before we close, we record our appreciation for valuable assistance rendered by the learned counsel for the parties which enabled us to decide several important issues in these appeals. We also record our appreciation for assistance rendered by the learned Amicus Curiae Shri Colin Gonsalves, Senior Advocate.

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<sup>11</sup> *All Dimasa Students Union v. State of Meghalaya*, 2016 SCC OnLine NGT 422

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH AT NEW DELHI  
ORIGINAL APPLICATION NO. 110 (THC) OF 2012**

**IN THE MATTER OF:**

Threat to life arising out of Coal Mining  
in South Garo Hills District ...Applicant

VERSUS

State of Meghalaya & Ors. ... Respondents

**AND IN THE MATTER OF:-**

Dalmia Cement (Bharat) Ltd. ... Proposed Respondent/Impleader

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15.	<b><u>ANNEXURE R-14</u></b> :- A copy of Notice dated 16.07.2020 (DMR/MM/768/2018/Pt-II/Vol-IV/265) issued by Director of Mineral Resources, Meghalaya, Shillong to DCBL.	322

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FILED BY

  
MAHESH AGARWAL  
ADVOCATE FOR THE PROPOSED RESPONDENT  
AGARWAL LAW ASOCIATES  
19, BABAR ROAD, BENGALI MARKET,  
NEW DELHI – 110001  
PH: 011 – 42200000  
EMAIL – mail@aglaw.in

PLACE; NEW DELHI  
DATED:30.05.2023

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सत्यमेव जयते

**2098**  
GOVERNMENT OF MEGHALAYA  
DEPARTMENT OF FORESTS AND ENVIRONMENTOFFICE OF  
**THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS : MEGHALAYA**  
& HEAD OF FOREST FORCE

No. MFG.39/87/NGT (C)/ Vol.-IX/ 12.722.

Dated Shillong, the 5<sup>th</sup> September, 2019

Issued on \_\_\_\_\_

**From: Shri H. C. Chaudhary, IFS**

Addl. Principal Chief Conservator of Forests (Planning, Development and Legal Matters), Government of Meghalaya, Shillong

**To: The Managing Director**Dalmia Bharat Cements Limited (formerly known as Adhunik Cements Limited)  
Thangskai, East Jaintia Hills District, Meghalaya  
(Email: Pradhan.Bhabagrahi@dalmiabharat.com)**Sub:** Record of Minutes of Proceedings of Seventeenth Sitting of the Committee constituted by the Hon'ble National Green Tribunal (NGT) under Chairmanship of Hon'ble Mr. Justice B.P. Katakey, Former Judge, Guwahati High Court held at Shillong on 14<sup>th</sup> August, 2019.**Ref:** This office letter No. MFG.39/87/NGT(C)/Vol.VIII/11,256-329 dated 20.08.2019

Sir/Madam,

In continuation of this Office's letter under reference on the above-mentioned subject it is stated that the following information/documents desired by the Committee constituted by the Hon'ble National Green Tribunal (NGT) under Chairmanship of Hon'ble Mr. Justice B.P. Katakey, Former Judge, Guwahati High Court are still awaited:

- (i) Year-wise details of clinker and / or power produced since imposition of ban on coal mining in the State in April 2014;
- (ii) Year-wise details of coal and / or any other alternate fuel procured since imposition of ban on coal mining in the State in April 2014;
- (iii) Year-wise details of the quantity of cement/ clinker on which transport subsidy, if any, has been claimed by the plant since imposition of ban on coal mining in the State in April 2014;
- (iv) A copy of annual report for each of the years since imposition of ban on coal mining in the State ;
- (v) Average estimated quantity of coal and / or any other alternate fuel(s) required to produce one tonne of clinker and / or one unit (kwh) of power; and
- (vi) A copy of Detailed Project Reports (DPRs) submitted to the Bank(s) / Financial Institution(s) to obtain loan for establishment / expansion / modernisation of the plant.

e/c

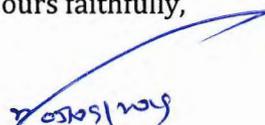
Accordingly, you are requested to submit the afore-mentioned information/documents to this Office **on or before 16.09.2019 without fail.**

It is also brought to your notice that the Hon'ble National Green Tribunal in order dated 22.08.2019 in Original Application No. 110 (THC)/2012 in the matter of Threat to life arising out of coal mining in south garo hills district *versus* State of Meghalaya and others directed that the companies in question are directed to furnish the requisite information to the Committee, failing which this Tribunal may have to take coercive measures against the Chief Executive Officers of the companies. The Hon'ble NGT in the said order further directed that this aspect will be considered in the light of further report of the Committee.

This is for your information and necessary action.

Yours faithfully,

**Encl.:** As above.



**(H C Chaudhary, IFS)**

Addl. Principal Chief Conservator of Forests  
Planning, Development and Legal Matters  
(E-mail: harishcc@yahoo.com)

Memo No. MFG.39/87/NGT (C)/ Vol.-IX/ 12. 723

Dated Shillong, the 5<sup>th</sup> September, 2019  
issued on \_\_\_\_\_

**Copy to:**

1. The Principal Secretary to the Government of Meghalaya, Forests and Environment Department, Shillong for information.



**Addl. Principal Chief Conservator of Forests**  
Planning, Development and Legal Matters



# 2100 ANNEXURE R-9



*newthink! cement! sugar! refractories! power!*

To,

Shri H.C. Chaudhary, IFS

Addl. Principal Chief Conservator of Forests (Planning, Development and Legal Matters),

Government of Meghalaya, Shillong

Subject: Submission of information/documents as desired by the Committee constituted by the Hon'ble National Green Tribunal (NGT) under the Chairmanship of Hon'ble Mr. Justice B.P. Katakey, Former Judge, Gauhati High Court.

Ref.: MFG.39/87/NGT( C)/Vol.-IX/12,722 Dated 5<sup>th</sup> September, 2019

Sir,

In compliance with your requested vide your above-referred letter dated 5<sup>th</sup> September, 2019, we are submitting the following details as desired:

Sl. No.	Details of information/documents	Annexure
(i)	Year-wise details of clinker and/or power produced since imposition of ban on coal mining in the State in April 2014	Annexure-I
(ii)	Year-wise details of coal and/or any other alternate fuel procured since imposition of ban on coal mining in the State in April 2014	Annexure-II
(iii)	Year-wise details of the quantity of cement/clinker on which transport subsidy, if any, has been claimed by the plant since imposition of ban on coal mining in the State in April 2014	Annexure-III

**Dalmia Cement (Bharat) Limited**

3rd & 4th Floor, Anil Plaza II, ABC G.S. Road, Guwahati - 781 005 (Assam), India  
 t 91 361 7156700 f 91 361 7156707, w [www.dalmiacement.com](http://www.dalmiacement.com), CIN : U65191TN1996PLC035963  
 Registered Office : Dalmiapuram, Dist. Tiruchirapalli, Tamil Nadu-621 651, India  
 A **Dalmia Bharat Group** company, [www.dalmiabharat.com](http://www.dalmiabharat.com)



*newthink! cement! sugar! refractories! power!*

(iv)	A copy of annual report for each of the years since imposition of ban on coal mining in the State	Annexure-IV 2014-15 2015-16 2016-17 2017-18
(v)	Average estimated quantity of coal and/or any other alternate fuel(s) required to produce one tonne of clinker and/or one unit (kwh) of power	Annexure-V

It is submitted that the annual report for the year 2018-19 is yet to be published. The same shall be submitted, if the Committee so desires, as and when the same is published. It is further submitted that copy of the Detailed Project Report of Adhunik Cement Limited, which now stands merged with Dalmia Cement (Bharat) Limited, is not available with DCBL at present. We are trying to obtain a copy of the same from the concerned Banker which has caused the delay in submission of the requisite documents. DCBL shall submit the DPRs as desired as and when the same can be obtained.

Accordingly, we request you to take on record the documents submitted herewith and also permit us to submit the remaining documents, if the Committee so desires, as and when the same become available.

Thanking you,

For, Dalmia Cement (Bharat) Limited

(Purbali Bora)

Senior Manager- Legal

Dated: 14<sup>th</sup> September, 2019

**Dalmia Cement (Bharat) Limited**

Registered Office: Dalmiapuram, Dist. Tiruchirapalli, Tamil Nadu-621 651, India  
 Phone: 91 361 7156700 / 91 361 7156707, www.dalmiacement.co.in, CIN : U65191TN1996PLC035963  
 A Dalmia Bharat Group company, www.dalmiabharat.com

**Annexure -I (Year-wise details of clinker and/or power produced since imposition of ban on coal mining in the State in April 2014)**

---

SL NO	PARTICULARS	UOM	2014-15	2015-16	2016-17	2017-18	2018-19
1	CLINKER PRODUCTION	MT	6,68,239	7,32,700	7,92,075	9,00,686	10,84,883
2	POWER PRODUCTION	MWHR/MU	1,17,403	1,08,108	88,733	1,02,485	1,10,108

**Annexure -II (Year-wise details of coal and/or any other alternate fuel procured since imposition of ban on coal mining in the State in April 2014)**

---

<b>PARTICULARS</b>	<b>Opening Stock</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>TOTAL</b>
Coal & Pet Coke Purchase	30,710	17,433	98,296	56,208	1,07,092	54,478	3,64,217

In Addition to above Alternate fuel has also been used. These alternate fuel includes saw dust, agro waste, slate etc. Applicable taxes , duties & royalties has been paid on these alternate fuel as applicable.

**ANNEXURE- III** (Year-wise details of the quantity of cement/clinker on which transport subsidy, if any, has been claimed by the plant since imposition of ban on coal mining in the State in April 2014)

Month & Year	Finished Goods			
	Clinker		Cement	
	Claim Qty (MT)	Value (Rs.)	Claim Qty (MT)	Value (Rs.)
April'14 to June'14	-	-	1,16,996.21	7,63,04,755.00
July'14 to Sept'14	-	-	1,31,582.55	8,38,46,578.00
Secondary Freight				58,17,779.00
Oct'14 to Dec'14			1,69,000.80	10,15,73,800.00
Secondary Freight				1,39,87,700.00
Jan'15 to Mar'15	-	-	2,23,769.83	14,38,22,925.00
Secondary Freight				1,39,28,872.00
<b>Total (FY 14-15)</b>	-	-	6,41,349.390	43,92,82,409
Apr'15 to June'15	7,739.98	1,01,20,510.00	1,50,541.04	11,03,10,963.00
July'15 to Aug'15	23,569.41	2,78,62,363.00	69,107.00	6,83,17,508.00
<b>Total (FY 15-16)</b>	31,309.390	3,79,82,873	2,19,648.040	17,86,28,471

Note: For FY 16-17, 17-18 & 18-19 the transport subsidy is "NIL"

**ANNEXURE-V** (Average estimated quantity of coal and/or any other alternate fuel(s) required to produce one tonne of clinker and/or one unit (kwh) of power)

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Average estimated quantity of coal and/or any other alternate fuel(s) required to produce one tonne of clinker and/or one unit (kwh) of power) Will primarily depend on the calorific Value of coal/any other alternate fuel used to produce clinker and/or one unit of Power. There is very high variation in various kinds of fuel used and therefore there is no standard per ton usage which can be estimated as it varies from year to year. However the data provided in SL No. 1 and 2 may kindly be utilised for the assessment of the same.

**ANNEXURE R-10****THE FIFTH INTERIM REPORT**

of

The Independent Committee

Consisting of

**JUSTICE BROJENDRA PRASAD KATAKEY**  
FORMER JUDGE, GUWAHATI HIGH COURT, GUWAHATI

**PROF. S. C. BHOWMIK**  
RUNGTA CHAIR PROFESSOR, DEPARTMENT OF MINING ENGINEERING  
REPRESENTATIVE OF THE INDIAN INSTITUTE OF TECHNOLOGY- INDIAN SCHOOL  
OF MINES (IIT -ISM), DHANBAD 826 004

**DR. SHANTANU KUMAR DUTTA, ADDL. DIRECTOR**  
REPRESENTATIVE OF THE CENTRAL POLLUTION CONTROL BOARD

On

**RESOURCE (COAL) AUDIT OF CEMENT INDUSTRIES AND  
THERMAL POWER PLANTS IN MEGHALAYA**

**Submitted To**

**The Hon'ble National Green Tribunal, Principal  
Bench, New Delhi**

**On 02.12.2019**

**Constituted vide order dated 31.08.2019 to go into the issues  
arising out of the coal mining in the State of Meghalaya**



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## CHAPTER-1: BACKGROUND

**1.1** On 12.11.2018, the Committee visited some coal mine areas in East Jaintia Hills District. The Committee on the said day also visited two Cement Plants (*viz.* Star Cement Limited and Star Cement Meghalaya Limited) and a Thermal Power Plant (*viz.* Meghalaya Power Limited) of the Star Cement Limited located at Lumshnong village in East Jaintia Hills District. The Committee during the visit to these plants made following observations:-

- (i) M/s Meghalaya Power Limited is a 43 MW Coal Based Power Plant. The Unit stands beside M/s Star Cement Limited, which is an integrated cement plant. M/s Meghalaya Power Limited, M/s Star Cement Limited and another cement plant, namely, M/s Star Cement Meghalaya Limited, are Units of same group of Companies. The cement plants are branded as 'Star Cement'.
- (ii) Huge quantity of coal is lying in open coal storage areas. The representative of the cement plants, present during the visit, claims that they procure coal for the plant from North East Coalfields Limited, Margherita and from Eastern Coal Fields as well as from the State of Nagaland. It has also been stated that they procured coal from local market when the transportation of the coal from mines in the State of Meghalaya was allowed by the Hon'ble Supreme Court and Hon'ble National Green Tribunal. They also claimed import of about 20,000 MT of coal from Malaysia during the last financial year.
- (iii) As per the record of the Central Pollution Control Board, the Star Cement Group of Companies, which has 2(two) power plants of 1 X 43 MW and 1 X 8 MW capacity, which need considerable amount of coal for operating the power plants. It has 2(two) integrated cement Units, *viz.* Star Cement Limited and Star Cement Meghalaya Limited, which use coal of about 15% of total clinker production.
- (iv) Moreover, as per the record of Central Pollution Control Board, there are few other Coal Based Power Plants in Lumshnong areas of East Jaintia Hills District. The capacity of captive power plants of various cement producing mills, as is available with the Central Pollution Control Board, is given below –



<i>Sl. No.</i>	<i>Name of the Cement Plant</i>	<i>Capacity of Captive Power Plants</i>
1.	<i>Adhunik Cement Limited</i>	<i>25 MW</i>
2.	<i>Meghalaya Cements Limited</i>	<i>12 MW</i>
3.	<i>Amrit Cements Limited</i>	<i>10 MW</i>
4.	<i>Goldstone Cements Limited</i>	<i>10 MW</i>

**1.2** The Committee in its Fourth Sitting held on 13.11.2019 took note of the above observations and directed the North Eastern Regional Directorate of the Central Pollution Control Board (CPCB) to prepare and submit a report on the coal consumption in the Captive Power Plants of the Cement Manufacturing Units of East Jaintia Hills District and also in the clinker production for the last 4 (four) years (*viz.* 2014-15, 2015-16, 2016-17 and 2017-18) based on technical data on average coal requirement per MT of clinker production and coal consumption per million units of power generation.

**1.3** During Fifth Sitting of the Committee held on 07.12.2019 the North Eastern Regional Directorate of the CPCB assured the Committee that based on compilation of the data, a report on coal consumption as sought by the Committee in its Fourth Sitting will be submitted to the Committee within a week.

**1.4** During Sixth Sitting of the Committee held on 20.12.2019 the North Eastern Regional Directorate of the CPCB informed the Committee that the report as asked for relating to year - wise requirement, source of procurement and consumption of coal by the Cement Industries, Power Plants and Captive Power Plants in the State of Meghalaya, shall be submitted to the Committee in its next meeting

**1.5** The Committee through its First Interim Report dated 31.12.2018 placed its observations on the matters as contained in paragraph 1.1 above, before the Hon'ble National Green Tribunal (NGT). The Hon'ble NGT in Order dated 04.01.2019 took note of these observations and directed that the Committee may consider the

resource (coal) audit of Meghalaya Power Limited and Star Cement Limited to ascertain the legitimate procurement of coal and its source.

**1.6** During Seventh Sitting of the Committee held on 11.01.2019 the North Eastern Regional Directorate of the CPCB informed that out of 7 (seven) Captive Power Plants in the State of Meghalaya, the relevant data relating to coal consumption from 6 (six) Plants have been collected. It was also informed that the data from the remaining 1 (one) Plant *viz.* Goldstone Cement Limited will be collected soon and the consolidated data for all these 7 (seven) plants will be submitted to the Committee in its next Sitting.

**1.7** During Eighth Sitting of the Committee held on 11.02.2019 the North Eastern Regional Directorate of the CPCB submitted a report on coal consumption by Thermal Power Plants and Cement Industries in the State of Meghalaya. As per the said report the State of Meghalaya is home to sixteen (16) Cement Industries and 9 nine (9) Thermal Power Plants. Except one standalone Thermal Power Plants (*viz.* Meghalaya Power Limited), all other Thermal Power Plants are Captive Power Plants of the Cement and other Industries. Out of these sixteen (16) Cement Industries, one (1) Cement Industry (*viz.* Billenium Cement Limited) is a clinker grinding unit which does not use any coal. It has also been stated in the said report of the North Eastern Regional Directorate of the CPCB that three (3) Cement Industries (*viz.* H.M. Cement Limited, RNB Cement Limited and Megatech Engineers Limited) did not consume any coal since the year 2014-15 as these industries were under shutdown. It has also been stated in the said report that out of these sixteen (16) Cement Industries, two industries (*viz.* Jaintia Cement Limited and Virgo Cement Limited) are vertical shaft Kiln (VSK) based cement producing units. These units use coke breeze/low ash metallurgical coke (LAMC) as a fuel. No coal has been used by any of these industries since ban on rat hole mining was imposed by the Hon'ble NGT in the month of April, 2014.

**1.8** The Committee took a copy of the said Report on record for further examination and directed the North Eastern Regional Directorate of the CPCB to submit a report to the Committee as to whether the procurement of coal from Meghalaya by the Thermal Power Plants and Cements Industries has violated any

condition set forth in the licence/ permission granted for setting up of such power plants and cement industries and if so, the required action to be taken against those Thermal Power Plants and Cement Industries. The Committee further directed that the said report shall be submitted on 25.02.2019.

**1.9** During Ninth Sitting of the Committee held on 25.02.2019 the North Eastern Regional Directorate of the CPCB sought more time to submit a report relating to the violation or otherwise of any condition set forth in the license/ permission granted to the thermal power plants and cement industries by procuring coal locally from the State of Meghalaya and also the action required to be taken against those thermal power plants and cement industries. The Committee allowed the North Eastern Regional Directorate of the CPCB to submit the report till its next Sitting to be held on 25.03.2019.

**1.10** During Eleventh Sitting of the Committee held on 25.03.2019 the North Eastern Regional Directorate of CPCB submitted an updated report on coal consumption by Cement Industries and Thermal Power Plants in the State of Meghalaya. The Committee after examination of the said Report observed that year-wise details of coal reported to be consumed by various Cement and Thermal Power Plants have only been provided in the said report. The Committee further noted that in the absence of year-wise details of cement or the power produced by each of the Cement Industries and Thermal Power Plants and the quantity of coal required to produce such quantity of cement or power, it is not possible for the Committee to ascertain that quantity of coal reported to be procured by these plants was sufficient to produce reported quantity of cement/power. The Committee further noted that difference between the quantity of coal reportedly consumed by each of the Cement Industries and Thermal Power Plant and the quantity of coal required to produce such reported quantity of cement or power by each such plant, if any, could have been met by illegally mined coal. The Committee therefore directed the North Eastern Regional Office of the CPCB to revise the report keeping in view the above observations and submit the same to the Committee during its next Sitting to be held on 25.04.2019.

**1.11** The Hon'ble NGT by order dated 11.04.2019 directed that the Committee may also consider requiring audit of the sources of coal acquired by the power generation and cement plants in the State of Meghalaya.

**1.12** The Committee in its twelfth Siting held on 25.04.2019 formulated a format for undertaking resource (coal) audit of each Cement Industry and Thermal Power Plant in the State of Meghalaya by North Eastern Regional Directorate of the CPCB in compliance of the directions issued by the Hon'ble NGT's by the said Order dated 11.04.2019.

**1.13** During Fourteenth Sitting of the Committee held on 03.06.2019 representative of the CPCB informed the Committee that information in respect of resource (coal) audit of Cement Industries and Thermal Power Plants in the State of Meghalaya to be undertaken by them in compliance of directions issued by the Hon'ble NGT by order dated 11.04.2019 has been received from only two such units. Information received from these units also does not appear to be correct. The Committee during the said Sitting noted that reluctance of these Cement Industries and Thermal Power Plants to provide requisite information not only amounts to total disregard and disrespect to the Hon'ble NGT and to the CPCB but also creates a suspicion about use of illegally mined coal by these plants. The Committee further noted that continuous defiance of these units is highly unacceptable and cannot be tolerated any further. The Committee, keeping in view the above, directed that in case any of these units continues to wilfully disobey the requests made by the North Eastern Regional Directorate of CPCB to provide the data/information required by them to conduct the resource (coal) audit, the North Eastern Regional Directorate of CPCB shall initiate appropriate punitive action, as per law, against each such defaulting units.

**1.14** The Committee during its Fourteenth Sitting held on 03.06.2019 also noted that year-wise details of coal purchased by each of these units since imposition of ban on mining of coal in the State by the Hon'ble NGT are already available in the first report prepared by the North Eastern Regional Directorate of the CPCB. The Committee further noted that other information such as annual production of coal/power and specific fuel consumption by each such units are available in the Annual Reports and Detailed Project Report (DPR) of these units, a copy of which is either

available in the public domain or is already available with North Eastern Regional Directorate of the CPCB. The Committee keeping in view the above directed that the North Eastern Regional Directorate CPCB shall complete resource (coal) audit of each cement/power plant in the State and submit a report to the Committee within a month, without fail.

**1.15** The Committee in its Fifteenth Sitting held on 28.06.2019 noted that from perusal of information on the clinker and power produced by some of these plants available in their annual reports, a copy of which is available in the public domain *prima facie* it appears that quantity of coal reported to be procured by some of these plants is grossly insufficient to produce reported quantity of cement and/or power by such plants. The Committee further noted that the gap has, in all probability, been met by illegally mined coal. The same, if found to be true, has not only resulted in gross violation of the orders of the Hon'ble NGT and the Hon'ble Supreme Court but has also resulted in enormous loss of revenue to the State. To have a preliminary assessment of illegally sourced coal, if any, used by any of these plants/industries after ban on mining of coal was imposed by the Hon'ble NGT in April, 2014, the Committee directed the Managing Directors/ Chief Executive Officers of all Cement Industries and Thermal Power Plants in the State of <sup>Meghalaya</sup> to depute their duly authorised representative(s) to remain present before the Committee in its sitting to be held on 23.07.2019 and produce before the Committee, along with supporting documentary evidence, the following information /documents:

- (i) Year-wise details of clinker and / or power produced since imposition of ban on coal mining in the State in April 2014;
- (ii) Year-wise details of coal and / or any other alternate fuel procured since imposition of ban on coal mining in the State in April 2014;
- (iii) Year-wise details of the quantity of cement/ clinker on which transport subsidy, if any, has been claimed by the plant since imposition of ban on coal mining in the State in April 2014;
- (iv) A copy of annual report for each of the years since imposition of ban on coal mining in the State ;

- (v) Average estimated quantity of coal and / or any other alternate fuel(s) required to produce one tonne of clinker and / or one unit (kwh) of power; and
- (vi) A copy of Detailed Project Reports (DPRs) submitted to the Bank(s) / Financial Institution(s) to obtain loan for establishment / expansion / modernization of the plant.

**1.16** During Sixteenth Sitting of the Committee representatives of 9 (nine) Cement Industries (*viz.* Amrit Cement, Cosmos Cement Limited, Dalmia Bharat Cement Limited, Jaintia Cement Limited, JUD Cement Limited, Mawmluh Cherra Cement Limited, Meghalaya Cement Limited, Star Cement Limited and Star Cement Meghalaya Limited) and four (4) Thermal Power Plants (*viz.* Maithan Alloys Limited, Meghalaya Power Limited, Shree Sakambari Ferro Alloys Pvt. Ltd. and Shyam Century Ferrous Ltd.) appeared before the Committee. A summary of deliberations held on the matter during the said Sitting of the Committee is as below:

- (i) Representatives of Mawmluh Cherra Cement Limited, Jaintia Cement Limited, Maithan Alloys Limited and Shree Sakambari Ferro Alloys Pvt. Ltd. submitted information and documents sought by the Committee. The Committee observed certain discrepancies in information submitted by Maithan Alloys Limited and Shree Sakambari Ferro Alloys Pvt. Ltd. and requested them to depute a representative to attend next sitting of the Committee to be held on 14.08.2019 along with the corrected information. The Committee also noted that the information provided by the Mawmluh Cherra Cement Limited does not contain Annual Report for the year 2018-19.
- (ii) Representative of Jaintia Cement Limited informed that they do not use coal as a fuel. He further stated that the entire fuel requirement for the said plant is met from the Coke Breeze sourced from Assam. The Committee directed the North Eastern Regional Directorate of the CPCB to undertake audit of each of the Coke Plants from which the coke has reportedly been sourced by the Jaintia Cement Limited in the format stipulated by the Committee for resource (coal) audit of cement factories and Thermal Power Plants in Meghalaya and submit a report to the Committee within one month. The said Report is still awaited from the North Eastern Regional Directorate of CPCB.

- (iii) The representative of Cosmos Cement informed that they have not yet installed the plant and machineries of the Cement Plant and have therefore neither commenced production of the cement nor have purchased any coal.
- (iv) Dr. Shantanu Kumar Dutta, Addl. Director, North East Regional Directorate of the CPCB who is also a member of the Committee informed that the RNB Cement Limited will not be able to provide any information or document as the plant has been taken over by the National Company Law Tribunal (NCLT) and is managed by an Interim Resolution Professional (IRP).
- (v) Representatives of Amrit Cement, Meghalaya Cement Limited, Meghalaya Power Limited, Star Cement Limited and Star Cement Meghalaya Limited initially questioned the jurisdiction of the Committee to seek information from them. Later on they agreed to provide the information and documents sought by the Committee provided additional time is granted to them. Similarly representatives of Dalmia Bharat Cement Limited, JUD Cement and Shyam Century Ferrous Limited requested the Committee to provide additional time for submission of the information and documents sought by the Committee. In spite of prior notice, five Cement Industries (*viz.* Greenvalley Industries Limited, Goldstone Cements Limited, Hills Cements Limited, RNB Cement Limited and Virgo Cements Limited) and one Thermal Power Plant (*viz.* CMJ Breweries Limited) did not depute a representative to attend Sixteenth Sitting of the Committee. The Committee directed the afore-mentioned defaulting Industries to depute a representative to attend next Sitting of the Committee to be held at Shillong on 14.08.2019 along with all information and documents sought by the Committee, without fail.

**1.17** During Seventeenth Sitting of the Committee held on 14.08.2019, representatives of nine (9) Cement Industries (*viz.* Amrit Cement, Dalmia Bharat Cement Limited, Goldstone Cement Limited, Green Valley Industries Limited, Hill Cement Limited, JUD Cements Limited, Meghalaya Cement Limited, Star Cement Limited and Star Cement Meghalaya Limited) and four (4) Thermal Power Plants (*viz.* Maithan Alloys Limited, Meghalaya Power Limited, Shree Sakambari Ferro Alloys Pvt. Ltd. and Shyam Century Limited) appeared before the Committee. A learned Senior Counsel along with one other Counsel appeared before the Committee on behalf of Star Cement Limited and two of its subsidiaries (*viz.* Star

Cement Meghalaya Limited and Meghalaya Limited). A summary of deliberations held on the matter during the said Sitting of the Committee is as below:

- (i) The Mawmluh Cherra Cement Limited provided a copy of Annual Report for the year 2018-19. The Committee took the same on record.
- (ii) Three (3) Cement Industries (*viz.* Goldstone Cement Limited, Meghalaya Cement Limited, Star Cement Limited and Star Cement Meghalaya Limited) and four (4) Thermal Power Plants (*viz.* Maithan Alloys Limited, Meghalaya Power Limited, Shree Sakambari Ferro Alloys Pvt. Ltd. and Shyam Century Limited) submitted information and documents sought by the Committee.
- (iii) One (1) Cement Industry (*viz.* Amrit Cement) provided some of the information/document sought by the Committee. Four (4) Cement Industries (*viz.* Dalmia Bharat Cement Limited, Greenvalley Industries Limited, Hill Cement Limited and JUD Cement Limited) sought additional time to provide information/documents sought by the Committee. In spite of prior notice, one Cement Industry (*viz.* Virgo Cements Limited) and one Thermal Power Plant (*viz.* CMJ Breweries Limited) neither deputed a representative to attend meeting of the Committee nor provided the information/documents to the Committee. The Committee directed all these defaulting Industries to provide the information/documents to the Committee within one week positively.
- (iv) The Committee noted that the quantity of coal procured by Maithan Alloys Limited and Shri Sakambari Ferro Alloys Pvt. Ltd, as per the statements submitted to the Committee, is substantially different than the quantity of coal reportedly consumed by the these Plants, as per the details given in a report on coal consumption by the Thermal Power Plants and Cement Industries submitted to the Committee by North Eastern Regional Directorate of CPCB. The Committee therefore, directed the North Eastern Regional Directorate of CPCB to re-examine the records relating to purchase and use of coal by above Thermal Power Plants and submit a report to the Committee within fifteen days.
- (v) The Committee noted that *prima-facie* the quantity of coal purchased by majority of Cement Industries and Thermal Power Plants is much lower than the quantity of coal required to produce reported quantity of clinker and/or electricity.

- (vi) Many of the Cement Industries and Thermal Power Plants claimed that they have used large quantity of slate in place of coal. The Committee noted that it is neither technically feasible nor legally permissible to use large quantity of slate in place of coal.

**1.18** The Star Cement Meghalaya vide letter dated 26.08.2019 submitted a representation wherein, among others, it has been stated that observations made by the Committee that *prima-facie* they have used illegal coal for production of clinker/power is not based on the factual information but on the premise that use of alternate fuel by them is not technically feasible and that no royalty on the same was paid. The Committee sent a copy of the said representation to the MSPCB, the North Eastern Regional Directorate of the CPCB and North Eastern Regional Office of the Ministry of Environment, Forest and Climate Change (MoEFCC), Government of India (GoI) for their comments.

**1.19** During Eighteenth Sitting of the Committee held on 16.09.2019, the MSPCB, the North Eastern Regional Directorate of the CPCB and North Eastern Regional Office of the MoEFCC, GoI submitted their comments on submissions made by the Star Cement in their said letter dated 26.08.2019. The Committee took a copy of these comments on record and directed as below:

- (i) The MSPCB shall provide to the Committee a copy of Environmental Statements submitted to them by all Cement Industries and Thermal Power Plants in the State of Meghalaya for the period from 20014-15 to 2018-19.
- (ii) The MSPCB shall provide to the Committee a copy of all authorizations/ no objection certificates granted by them to Cement Industries and Thermal Power Plants in the State of Meghalaya for use of any fuel other than coal.
- (iii) The MSPCB shall provide to the Committee a copy of 'Consent to Establish' and/or 'Consent to Operate', if any, granted for mining of slate or muslate in the State of Meghalaya. In case no such consent has been granted, the same shall also be intimated to the Committee within one week
- (iv) The North Eastern Regional Office of the MoEFCC, GoI and the State Environmental Impact Assessment Authority (SEIAA), Meghalaya shall provide to the Committee a copy of Environmental Clearance(s), if any, granted for mining of slate in the State of Meghalaya. In case no such EC has been issued by them the same shall also be intimated to the Committee.

- (v) The North eastern Regional Directorate of the CPCB shall provide to the Committee a copy of data which formed the basis for making a submission before the Committee while preparing its First Interim Report to the effect that the two integrated cement units of State Cement Limited (*viz.* Star Cement Limited and Star Cement Meghalaya Limited) use coal of about 15% of total clinker production. The CPCB may also provide the reasons for discrepancy between the said information provided in December 2018 and the information provide vide letter dated 13.09.2019 wherein it has been stated that actual requirement of coal by these cement plants is even less that self-declared quantity of 12.75% of clinker production.

**1.20** During Eighteenth Sitting of the Committee held on 16.08.2019, the Commissioner and Secretray to the Government of Meghalaya, Mining and Geology Department informed the Committee that no mining lease has been granted so far for extraction of slate in the State of Meghalaya. He further stated that local suppliers have supplied muslate or slate sourced from overburden of coal mining carried out prior to ban imposed by Hon'ble NGT. He also stated that six (6) Cement Industries (*viz.* Dalmia Bharat Cement Limited, Goldstone Cement Limited, Green Valley Industries Limited, Meghalaya Cements Limited, Star Cement Limited and Star Cement Meghalaya Limited) and one (1) Thermal Power Plant (*viz.* Meghalaya Power Ltd.) have paid royalty on slate used by them.

**1.21.** Later on, the Committee received requisite information/documents sought from all defaulting Cement Industries and Thermal Power Plants. The Committee also received information/documents sought from the MSPCB, North Eastern Regional Directorate of CPCB and North Eastern Regional Office of the MoEFCC, Gol in its Eighteenth Sitting held on 16.09.2019.



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## CHAPTER 2: ANALYSIS OF INFORMATION PROVIDED BY INDUSTRIES AND REGULATORY AUTHORITIES

### 2.1 Mawmluh Cherra Cement Limited

**2.1.1** The Mawmluh Cherra Cement Limited was initiated incorporated as a private enterprise under the Indian Companies Act, 1913 in the name of the 'Assam Cement Limited' on 20.05.1955 to establish first cement plant of the entire North East India at a place named Mawmluh located near Cherrapunjee at about 56 km from Shillong. Keeping in view the inability of the original promoters to raise requisite funds for establishment of the plant, the Government of Assam decided to take-over the enterprise. Accordingly, on 01.01.1964 the Assam Cement Limited became a Government of Assam undertaking with very small and token percentage of share given to private sector. The Cement Plant having installed capacity of 85,000 tones of cement per annum was commissioned in November 1964. With the reorganization of the composite State of Assam resulting in creation of a new State of Meghalaya on 22.01.1972 the control and management of the above enterprise formally passed over to the State of Meghalaya. On 07.05.1974 the above enterprise was rechristened as Mawmluh-Cherra Cement Limited (hereinafter referred to as "MCCL").

**2.1.2** The Committee examined the Techno-Economic Feasibility Report for expansion of existing cement plant of MCCL consisting of three long wet process kilns (Kiln 1 of 250 tons per day (TPD) and Kiln 2 and 3 of 340 TPD each) by addition of 600 TPD dry process kiln in the existing cement plant prepared by Holtec Consulting Private Limited in 2004. The said report envisages coal sourced from nearby areas as a fuel for the said plant. List of raw materials for the said plant given in the said Report does not include any other fuel. It has also been stated in the Said Report that specific coal requirement (*i.e.* percentage of coal required to produce a unit quantity of clinker) for the said plant is 16%.

**2.1.2** Presently, the dry process kiln of 600 tpd capacity is only operational in the MCCL. The all three wet process kilns have been de-commissioned in 2014. Foundation stone of the said dry process kiln was laid in 2004. The same however,

could be commissioned in the month of September 2016. Hence, after the imposition of ban on illegal rat-hole coal mining was imposed by the Hon'ble NGT in April 2014 the cement plant of the MCCL was in operation for a period of about three years (*viz.* from September 2016 to March 2019).

**2.1.3** Year-wise details of clinker produced and the coal procured by the MCCL to produce such clinker, since the ban on illegal rat hole coal mining was imposed by the Hon'ble NGT in April 2019 (*viz.* from the year 2014-15 to the year 2018-19) (hereinafter referred to as 'Audit Period') is as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Clinker produced (MT)	-	-	32,505	40,440	38,530	1,11,475
Coal procured (MT)			10,196	10,192	11,802	32,190

**2.1.4** The representative of North Eastern Regional Directorate of CPCB informed the Committee that after due scrutiny of all requisite documents, they have found that the entire afore-mentioned quantity of 32,190 MT coal has been procured by MCCL from legal sources.

**2.1.5** The Committee notes that as per the afore-mentioned information, the reported specific coal consumption (*i.e.* percentage of coal consumed to produce a unit quantity of clinker) for the MCCL during the Audit Period is 28.876 %. The Committee also notes that in paragraph 1 of the 'Guidelines on Co-processing in Cement/Power/ Steel Industry' issued by the CPCB in February, 2010, a copy of the which has been placed before the Committee by North Eastern Regional Directorate of the CPCB, it has been stated that 40 million tones of coal is required to produce 200 million tomes of cement in the entire country. The specific coal consumption for the cement industry for the country as a whole, as per the said Guidelines, is 20%.

**2.1.6** The Committee notes that the reported specific coal consumption by the MCCL during the Audit Period (*i.e.* 28.876%) is substantially higher than the

average specific coal consumption of the Cement Industry for the country as a whole (i.e. 20 %). The Committee further notes that the reported specific coal consumption of the MCCL is also substantially higher than the same for other Cement Industries in Meghalaya. **The Committee is therefore; of the view that during the Audit Period the entire requirement of coal for the MCCL has been met from legal sources.**

## **2.2 Star Cement Limited and its Two Subsidiaries (viz. Star Cement Meghalaya Limited and Meghalaya Power Limited)**

**2.2.1** The Star Cement Limited (formerly known as Cement Manufacturing Company Limited) is the largest cement manufacturer of the North-East India. The first cement plant of the Star Cement Limited, having installed capacity to produce 1,800 TPD clinker was commissioned TPD at Lumshnong village in East Jaintia Hills District in the year 2005. Later on the installed capacity of the said plant was enhanced to produce 2400 TPD clinker. During, 2013, Star Cement Meghalaya Limited, a wholly owned subsidiary of the Star Cement Limited, commissioned a cement plant having installed capacity to produce 5,300 TPD clinker. The Meghalaya Power Limited, a fully owned subsidiary of the Star Cement Limited established 8 MW Thermal Power Plant. The said plant was commissioned in 2009. Later on the installed capacity of the said Thermal Power Plant was enhanced to 51 MW by addition of an eight 43 MW unit. The said Thermal Power Plant having installed capacity of 43 MW was commissioned in 2013. All these Cement Plants and Thermal Power Plant of the Star Cement Limited and its afore-mentioned subsidiaries are located in Lumshnong village in close vicinity to each other. All these plants were in operation before the ban on illegal rat-hole coal mining was imposed by the Hon'ble NGT in April 2014.

**2.2.2** The Committee in its Sixteenth Sitting held on 23.07.2019 examined a Techno-Economic Feasibility Report (TEFR) of the Modernization & Expansion of the then existing plant of the Cement Manufacturing Company Limited (now Star Cement Limited) from 1800 TPD to 2400 TPD clinker and a similar report of 5300 TPD clinkerization plant of the Star Cement Meghalaya Limited, both prepared by Holtec Consulting Private Limited, a copy of the which was provided to the



Committee by representatives of the Star Cement Limited, and observed that both these plants have been designed to use 100% Meghalaya coal available locally from areas within the distance of 50 kms. Nowhere in these reports is it stated that any of these plants can be operated by any alternate fuel other than coal. It has also been stated in these Reports that net calorific value of the local coal to be used in these clinker plants is 5,800 Kcal/kg. It has also been stated in these Reports that specific heat consumption of these plants is 740 Kcal per kg of clinker. The specific coal requirement for both these plants, as per the aforementioned information given in these Reports, is 12.75 %.

**2.2.3** The Committee in its Sixteenth Sitting held on 23.07.2019 also examined TEFR of the Meghalaya Power Limited prepared jointly by Technical Consultant – Cethar Consulting Engineers (P) Ltd., Chennai and Financial Consultant- KBG Consultants Pvt. Ltd., Kolkata, a copy of the which was provided to the Committee by a representative of the Star Cement Limited, and observed that as per the said Report the said plant has been designed to use coal sourced from nearby coal mines at Bapung and Khliehriat, Jaintia Hills, in Meghalaya & captive mines, Meghalaya. Requirement of the locally sourced Meghalaya coal at 100 % capacity for the said 43 MW TPP, as per the said Report, is 720 MT per day. The specific fuel requirement for the said TPP, as per the information given in the said Report, is therefore 0.70 kg/ kwh. Nowhere, in the said Report it has been stated that it will be feasible to run the plant by using any alternate fuel other than coal.

**2.2.4** The Committee in its Sixteenth Sitting held on 23.07.2019 also noted that Environmental Clearance (EC) to the said TPP has been accorded by the Ministry of Environment and Forests, Government of India subject to, among others, a condition that *“In case source of fuel supply is changed at a later stage (now proposed on imported coal from Indonesia the project proponent shall intimate the Ministry well in advance along with necessary requisite documents for its concurrence for allowing the change., In such a case the necessity for re-conducting public hearing may be decided by the Ministry in consultation with the Expert Appraisal Committee”*. The Committee also noted that the North Eastern Regional Office of the MoEFCC, GoI during routine monitoring of conditions stipulated in EC to the said TPP has

observed that in contravention of the said condition, the plant has been operated by using locally sourced coal. For the said violation, the North Eastern Regional Office has requested the MoEFCC, GoI to initiate penal measures in accordance with the provisions of the Environment (Protection) Act, 1986 against the said TPP. In pursuance, a show cause notice has been issued to the said TPP by the MoEFCC, GoI. No action has however been taken against the Meghalaya Power Limited for continuous violation of the said condition stipulated in the EC for last several years.

2.2.5 The Committee after examination of documents submitted by representatives of the Star Cements Limited in its Sixteenth Sitting held on 23.07.2019 noted that year-wise details of clinker (in MT) or power (in kwh) produced and coal procured by each of the afore-mentioned three plants of the Star Cements Limited during the Audit Period are as below:

Plant	Items	Year					Total
		2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7	8
Star Cement Limited	Clinker produced (MT)	3,30,010	4,92,055	5,67,241	5,15,350	6,00,025	25,04,681
	Coal procured (MT)	13,417	47,628	10,192	25,267	10,989	1,07,493
Star Cement Meghalaya Limited	Clinker produced (MT)	15,49,349	16,29,025	15,79,345	15,41,945	14,36,600	77,36,264
	Coal procured (MT)	58,448	1,48,954	9,775	67,624	84,188	3,68,989
Meghalaya Power Limited	Power Produced (Million kwh)	167.923	183.114	201.624	190.059	170.116	912.836
	Coal procured (MT)	25,182	68,092	41,863	36,129	18,024	1,89,290
Total	Clinker produced (MT)	18,79,359	21,21,080	21,46,586	20,57,295	20,36,625	102,40,945
	Power Produced (Million kwh)	167.923	183.114	201.624	190.059	170.116	912.836
	Coal procured (MT)	97,047	2,64,674	61,830	1,29,020	1,13,201	6,65,772

2.2.6 During sixteenth Sitting of the Committee representatives of the Star Cement Limited also placed before the Committee a document stating therein that during the Audit Period, apart from the coal these plants also purchased alternate fuels such as Mu Slate, Petcoke and Saw dust. Year-wise details of the quantity of alternate fuels stated to be purchased by each of these plants are as below:

(Metric Tonne)

Plant	Nature of Alternate Fuel	Year					Total
		2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7	8
Star Cement Limited	Mu Slate	50,042	91,556	82,969	1,92,859	1,01,129	5,18,555
Star Cement Meghalaya Limited	Mu Slate/ Pet Coke/ Saw Dust	1,87,631	3,01,027	2,03,188	4,45,209	1,86,032	13,23,087
Meghalaya Power Limited	Mu Slate	1,06,243	1,39,303	1,73,348	2,87,638	1,58,652	8,65,184
<b>Total</b>		<b>3,43,916</b>	<b>5,31,886</b>	<b>4,59,505</b>	<b>9,25,706</b>	<b>4,45,813</b>	<b>27,06,826</b>

2.2.7 The Committee during its Sixteenth Sitting also noted that it has also been stated in the documents submitted to the Committee by representatives of the Star Cements Limited that average estimated requirement of coal and alternate fuel for production of clinker by these plants is 9% - 14% and 25% - 35% respectively. Similarly, it has also been stated in these communications that average estimated requirement of coal and alternate fuel for production of one kwh of power by the said Thermal Power Plant is 0.45 - 0.65 kg per kwh and 1.20 - 1.60 kg per kwh.

2.2.8 The Committee during its Sixteenth Sitting also noted that keeping in view that the project proponent in their own communication has stated that estimated requirement of coal for these plants is upto 14 % and both these plants are more than 10 years old, the actual requirement of coal for production of clinker by both these plants is atleast 14 % of the clinker produced. The Committee in the said

Sitting held on 23.07.2019 also noted that specific coal requirement for the Meghalaya Power Limited is atleast 0.70 kg/kwh as has been stated in its TEFR.

**2.2.9** The Committee in its Sixteenth Sitting also noted that use of alternate fuel, in place of coal in these plants, which have been designed to use coal as an exclusive fuel, requires major modification/alteration in their design and operation. The Committee in the said Sitting also noted that nothing was placed before the Committee to the effect that design of these plants have been altered/modified to enable them to utilise fuel such as slate having very low calorific value in place of the high calorific value local Meghalaya coal of about 5800 Kcal/kg calorific value. The Committee also noted that as per documents provided to the Committee, during the year 2016-17, the clinker plant of the Star Cement Meghalaya Limited was operated by using 9,775 MT coal and 2,03,188 MT of alternate fuel. The Committee in the said Siting noted that even with modifications, a clinker plant cannot attain the requisite kiln temperature with such a low calorie fuel mix.

**2.2.10** The Committee in its Sixteenth Sitting also noted that paragraph 2 of the Environment Impact Assessment (EIA) Notification issued by the MoEFCC, GoI vide S.O. 1533 dated 16.09.2006 mandates prior EC in the cases involving change in product mix. A representative of Star Cement Limited admitted before the Committee that no such EC has been obtained for any of these plants. Mr. H. Tynsong, Scientist D, North Eastern Regional Office of the MoEFCC, GoI during the said Sitting drawn attention of the Committee to specific condition no. (xi) (*viz. efforts shall be made to use low -grade lime, more fly ash and solid waste in cement manufacturing*) and no. (xii) (*viz. all efforts shall be made to use of high calorific hazardous waste in the cement kiln and necessary provision shall be made accordingly*) stipulated in EC to Star Cement Meghalaya Ltd. issued by the MoEFCC, GoI vide letter dated 28.10.2009 and stated that these conditions specifically provides for use of alternate fuel. He further stated that keeping in the above, use of alternate fuel in place of coal by the said plant does not requires prior EC. The Committee after examination of six-monthly self-compliance reports to said EC, a copy of which is available on website of the Star Cement Limited, observed that in respect of the afore-mentioned condition no. (xi) it has been reported that "SMCL is

*a clinkerization unit, no fly ash is used in the unit. The generated solid waste from the pollution control equipment has been recycled and re-used in the process and has been used for clinker manufacturing. Amount 8-10 % of low grade lime available in the mine has been used in the process".* Similarly, in respect of the afore-mentioned specific condition no. (xii) it has been reported that *"Provision already made to use of high calorific waste i.e. waste oil in the kiln. The tank capacity is 1000 litres. The used oil disposal process along with photograph has been submitted along with CREP in MoEF&CC, Shillong & New Delhi."* The Committee further noted that use of any alternate fuel, as was claimed by a representative of the Star Cement Limited, has not been reported anywhere in these self-compliance reports. The Committee also noted that even for the used oil, merely making a provision for its use and not any actual use has been reported in these self-compliance reports.

**2.2.11** The Committee in its Sixteenth Meeting also noted that apart from the revised EC, change in fuel for a plant also requires prior No Objection Certificate (NoC) from the MSPCB. The Member- Secretary of the MSPCB, during the said Meeting placed before the Committee a letter dated 24.09.2017 wherein the MSPCB communicated its no-objection certificate to M/s. Star Cement Meghalaya Limited for use of Petroleum Coke in its cement plant subject to conditions stipulated in the said letter. The Committee in the said Sitting further noted that use of Petroleum Coke by the said Cement Plant is not reported in any of the six monthly self-compliance for the period after 24.09.2017.

**2.2.12** The Committee in the Sixteenth Sitting also noted that the mining/ winning/ extraction of slate claimed to be used by these plants requires prior mining lease. It also requires payment of royalty and other taxes to the State Government. Nothing was placed before the Committee during the said sitting to indicate that any mining lease has been granted in the State for mining of slate and the slate, if any, used by these plants has been sourced from an area having valid mining lease after payment of requisite royalty and other taxes payable to the State Government.

**2.2.13** The Committee in the Sixteenth Sitting noted that year-wise details of clinker/power produced, coal required to produce reported quantity of

clinker/power produced (@ 14% for clinker and 0.70 kg of coal per kwh of power produced) and gap in coal requirement in respect of each of the afore-mentioned three plants of the Star Cement Limited during the Audit Period are as below:

Plant	Items	Year					Total
		2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7	8
Star Cement Limited	Clinker produced (MT)	3,30,010	4,92,055	5,67,241	5,15,350	6,00,025	25,04,681
	Coal required (MT)	46,201	68,888	79,414	72,149	84,004	3,50,655
	Coal procured (MT)	13,417	47,628	10,192	25,267	10,989	1,07,493
	Gap (MT)	32,784	21,260	69,222	46,882	73,015	2,43,162
Star Cement Meghalaya Limited	Clinker produced (MT)	15,49,349	16,29,025	15,79,345	15,41,945	14,36,600	77,36,264
	Coal required (MT)	2,16,909	2,28,064	2,21,108	2,15,872	2,01,124	10,83,077
	Coal procured (MT)	58,448	1,48,954	9,775	67,624	84,188	3,68,989
	Gap (MT)	1,58,461	79,110	2,11,333	1,48,248	1,16,936	7,14,088
Meghalaya Power Limited	Power Produced (Million kwh)	167.92	183.11	201.62	190.06	170.12	912.84
	Coal required (MT)	1,17,546	1,28,180	1,41,137	1,33,041	1,19,081	6,38,985
	Coal procured (MT)	25,182	68,092	41,863	36,129	18,024	1,89,290
	Gap (MT)	92,364	60,088	99,274	96,912	1,01,057	4,49,695
Total for above three plants	Coal required (MT)	3,80,656	4,25,131	4,41,659	4,21,063	4,04,209	20,72,718
	Coal procured (MT)	97,047	2,64,674	61,830	1,29,020	1,13,201	6,65,772
	Gap (MT)	2,83,609	1,60,457	3,79,829	2,92,043	2,91,008	14,06,946

**2.2.14** The Committee in its Sixteenth Sitting noted that prima-facie it appears that the gap in coal required to produce reported quantity of clinker and power by the afore-mentioned plants of the Star Cements Limited has been met by illegally sourced local coal. The Committee in the said Sitting also noted that even if a part of it has been met by any alternate fuel, the same has been done in violation of the environmental and mining laws and also without payment of the requisite royalty and other taxes to the State Government. The Committee also noted that neither it is technically feasible, nor it is legally permissible to replace coal by alternate fuel by any of these cement and power plants.

**2.2.15** The Star Cement Limited vide letter dated 26.07.2019 submitted a representation stating therein that observations made by the Committee that *prima facie* they have used illegal coal for production of clinker/ power is not based on the factual information but on the premise that use of alternate fuel by them is not technically feasible and that no royalty on the same was paid. Among others, the following has also been stated in the said representation:

- (i) TEFRs are prepared with a view to take a considered decision regarding technical and financial viability of undertaking a project and also is a requirement for funding by financial institutions/ banks. The TEFRs are prepared on the basis of available data and certain assumptions. The details given in the TEFRs and that actual found on the ground at the time of implementation of the project may widely vary. The energy requirement for production of clinker and power given in these Reports cannot be the ground for deciding the actual energy/ coal/ alternate fuel used by them. They had stated that the coal requirement for the plants is 9 -14 %. Based on the above the coal requirement cannot be taken as at least 14%. The age of the plants has nothing to do with the energy required to produce clinker/ power. In fact with passage of time and experience gained, the efficiency of the plants by and large improves.



- (ii) No major or even minor modification/ alteration in the plant design is required at all for using alternate fuel such as slate and pet coke by their plants. The plants can use coal as well as alternate fuel (slate).
- (iii) Revised EC is required only when product mix is changed and not for change in the use of fuel.
- (iv) The EC granted in respect of MPL specifically observes that "*imported coal from Indonesia will be used until domestic coal is available*". It is relevant to mention that none of the ECs granted after 3.6.2011 (when they were granted the EC), the MoEF & CC has prescribed the condition that only imported coal will be used. Similarly in the EC granted earlier to that date also, no such condition was prescribed. In any case for alleged violation of the conditions of the EC, the issue is under consideration of the competent authority and it is not linked with whether they have used legal coal or otherwise. Moreover, on their own they have approached SEIAA seeking change in the EC condition and this matter is yet to be decided.
- (v) Each and every payment for purchase of coal and alternate fuel has been made by cheque by them. The details of the payments made by them can easily be verified. There is no way they could have made any payment in cheque for purchase of illegal coal and no cash transaction has ever taken place for purchase of coal at all. On examination of their books of accounts and Annual Reports, the date - wise details of the payment made by them can easily be verified.
- (vi) Full royalty on purchase of alternate fuel by them has been paid on behalf of the suppliers by them.
- (vii) The alternate fuel is primarily overburden dumps produced during excavation of coal and does not require a separate mining lease at all. Like coal the alternate fuel (slate) was also produced as overburden during rat hole mining of coal - subsequently banned by the Hon'ble NGT.

- (viii) They have never been involved in illegal mining operations. The coal/ alternate fuel has been purchased by them from various local suppliers and royalty for the same has been paid. The Hon'ble Supreme Court has also held only that quantity of coal which was found to be illegally being transported as illegal coal. The ownership of the entire balance quantity lying on ground and already disposed of has been held to be that legally belonging to the concerned land owners/miners. In any case they have neither been involved in illegal mining (because they have not been involved in mining activity of coal/muslate) nor purchase of any illegal coal/ alternate fuel at all.
- (ix) Use of slate in the power plant results in generation of additional fly ash on account of it containing high ash content. The fly ash produced is used in manufacturing of PPC cement by them as well as by others. In fact they have been purchasing fly ash from other sources to meet their full requirement. The use of alternate fuel for production of power by the power plants is environmentally desirable, financially viable and results in use of the by product (fly ash) for further use as a raw material. Similarly in the cement plants use of alternate fuel, which has low sulphur content, is beneficial from the point of view of production process and is also environmentally desirable. However, it results in higher cost of production by way of additional transportation costs, handling cost, storage costs etc., due to which whenever coal at a reasonable rate is available, the same is not preferred by cement plants and power plants etc.
- (x) In fact the Meghalaya Power Limited has used slate during the years 2012 – 13 and 2013 – 14 also.
- (xi) The letter dated 24.11.2017 of the Divisional Mining Officer addressed to the Director of Mineral Resources, Meghalaya, a copy of the which was enclosed to the said representation, shows that alternate fuel (Slate / Muslate) was extensively being used by them as substantial quantity of the same were found to be physically available at their plants.

**2.2.16** The Committee vide letter dated 28.09.2019 sent a copy of the said representation to the MSPCB, North Eastern Regional Office of the MoEFCC, GoI and North Eastern Regional Directorate of the CPCB for comments.

**2.2.17** In reply, the MSPCB vide letter dated 13.09.2019 informed the Committee that revised Consent to Operate under the Air/ Water Act is not required for use of alternate fuel. It was also informed by the MSPCB that *prima facie* the use of alternate fuel by the cement and power plants is technically feasible and is in fact encouraged by the Pollution Control Board. A copy of Environmental Statement of the afore-mentioned plants of the Star Cement Limited was also provided to the Committee.

**2.2.18** Similarly, the North Eastern Regional Directorate of the CPCB vide letter dated 13.09.2019 submitted following comments on the said representation of the Star Cements Limited:

- (i) As per the literature available in published journal of repute (*Ref: Mishra, H. K. and Ghosh, R. K, 1996, Geology, Petrology and Utilization Potential of some Tertiary coals of the North-eastern Region of India. International Journal of Coal Geology, 30: 65 – 100*) the calorific value of Eocene and Oligocene coal deposit of Meghalaya is in the range of 6500 – 8500 and 6255 – 8650 kcal/kg respectively. If we go with the published literature it could be assumed the coal requirement in actual clinker production in these cement plants of Star Cement Limited could be even less than the percentage (12.75%) requirement of coal as indicated in the TEFR assuming that calorific value of the Meghalaya coal at 5800 kcal/kg.
- (ii) If the industries use Pet Coke or slate as alternate fuel resource (AFR) it is not required to modify or attach a new fuel/ material feeding system. AFRs are generally used together with coal. As the physical characteristics of the Pet Coke and slate are similar to the coal these alternate fuel can be used in the existing coal mills for pulverization before feeding into the Kilns or the boilers after blending with coal. The CPCB has been working on use of AFR, Hazardous Wastes (HW) and Refused Derived Fuel (RDF) in the cement mills, power

plants and also in the blast furnaces so as to use the resources inherited in the wastes generated by various industries or municipalities. It is already established that disposal of wastes in the cement kilns, power plants, blast furnaces, etc. could be best possible method to dispose of the wastes in an environmentally sound manner in one hand and also to recover the resources inherited in the wastes by these industries so that use of conventional fuel is reduced significantly.

- (iii) The CPCB has published guidelines for use of AFR/ HW/ RDF in these industries. The CPCB has been conducting workshops, seminars *etc.*, amongst the stakeholders to promote the use of these AFR/ HW/ RDF in Cement Kiln or boilers.
- (iv) Besides the encouragement by CPCB, MoEF & CC, of late, has been stipulating specific condition to a few cement mills in Meghalaya to use HW/ RDF/ AFR in kilns. The EC granted to various cement industries in the region stipulates such conditions.
- (v) To use AFR/ RDF/ HW in the kilns, amendment in the EC by the concerned project is not required as per the provisions of the EC Notification, 2006. Amendment of EC is required for expansion, modification of projects and also changing in product mix. Using of AFR/ HW/RDF is only a change in fuel mix but not a change in product mix. By using AFR/ HW/RDF in a kiln/ boiler/ furnace, use of conventional fuel like coal is reduced. The arrangement helps in reducing the consumption of conventional fuel like coal and this brings in reduction in greenhouse gas emission. Thus, the use of AFR/ HW/RDF in cements kilns/ power plants/ blast furnace, etc., have significant environmental benefits and therefore such industries are encouraged to use AFR/ HW/RDF. Moreover, as the country is facing lot of problems in managing the solid wastes, use of these wastes in kilns shall also minimize the waste disposal problems in the country.
- (vi) As per provisions of the Hazardous Wastes and Other Wastes (Management and Transboundary Movement) Rules, 2016, an industry has to apply to SPCB

for authorization under the Rules for using Hazardous Wastes (HW) in its kiln/ boiler/ furnace. As per the provisions of the said Rules, CPCB prepares guidelines for use of HW in cement kiln/ boiler/ furnace. Such guidelines for various types of HW are available in the website of CPCB.

- (vii) Cement industries and power plants in Meghalaya, the industries are using slate as AFR in the cement kilns and the power plants. It is understood that slate are also mined together with coal in the coalfields of Meghalaya. Slates are differentiated from coal from their appearance and structure. It is learnt that slates commonly occur as overburdens together with the coal deposits. Slates are having less calorific value than the coal and therefore have less market values. Though data is not available regarding calorific value of slate in the State of Meghalaya, during field visit to the industries, use of slate/ Muslate by the industries were observed. When coal mining was in operation before the mining ban, various small crushers were observed in the coal depots. These crushers used to crush/ pulverize the slate into powder form and used to mix with the coal.
- (viii) From the sample documents supplied by the industries, it is observed that the industries are paying royalty on the slate being procured. The CPCB in general does not go into the detail of the royalty payment by the industries.
- (ix) The CPCB agrees to the point that the Cement Industries/ Power Plants are not involved in illegal mining of coal or slate. Documentary evidences have been submitted by the industries that the fuel/ AFR are procured after payment or royalty.

**2.2.19** The North Eastern Regional Office of the MoEFCC vide letter dated 12.09.2019 submitted, among others, the following comments on the said representation of the Star Cements Limited:

- (i) The EC is required only when product mix is changed and not for change in the use of fuel. Even though the project has used alternate fuel in their cement manufacturing process, there is no change in product mix as the produce produced is cement. The specific condition No. 12 in EC accorded to Star

Cement Limited by the MoEFCC, GoI vide letter dated 28.10.2009 specifically provides that all efforts shall be made to use of high calorific hazardous waste in the cement kiln and necessary provision shall be made accordingly

- (ii) Para 3 of the guidelines for Pre-processing and Co-Processing of the Hazardous Waste and other wastes in Cement Plants as per Hazardous and Other Waste (Management and Trans-Boundary Movement) Rules, 2016 issued by the CPCB provides that utilization of hazardous and other waste for co-processing or for any other use shall be carried out only after obtaining authorisation from the State Pollution Control Board in respect of wastes on the basis of standard operating procedure or guidelines provided by the CPCB. The Star Cement Limited has obtained NoC for use of pet-coke in cement plants, and no record is available in the North Eastern Regional Office of the MoEFCC for use of slate as alternate fuel.
- (iii) A Note given in col. 5 of the item 3 (b) pertaining to cement industries in Schedule to the Environment Impact Assessment (EIA) Notification, 2016 substituted by the Notification bearing S.O. No. 3518 (E) dated 23.11.2016 of the MoEFCC, GoI provides that fuel for cement industry be coal, pet coke, waste provided it meets the emission standard.

**2.2.20** During Eighteenth Sitting of the Committee held on 16.09.2019, the Committee took on record the afore-mentioned communications from the MSPCB, the North Eastern Regional Directorate of the CPCB and North Eastern Regional Office of the MoEFCC, GoI containing their comments on submissions made by the Star Cement in their said representation dated 26.08.2019 and directed as below:

- (i) The MSPCB shall provide to the Committee a copy of Environmental Statements submitted to them by all Cement Industries and Thermal Power Plants in the State of Meghalaya for the period from 20014-15 to 2018-19.
- (ii) The MSPCB shall provide to the Committee a copy of all authorizations/ no objection certificates granted by them to Cement Industries and Thermal Power Plants in the State of Meghalaya for use of any fuel other than coal.
- (iii) The MSPCB shall provide to the Committee a copy of 'Consent to Establish' and/or 'Consent to Operate', if any, granted for mining of slate or muslate in

the State of Meghalaya. In case no such consent has been granted, the same shall also be intimated to the Committee within one week

- (iv) The North Eastern Regional Office of the MoEFCC, GoI and the State Environmental Impact Assessment Authority (SEIAA), Meghalaya shall provide to the Committee a copy of Environmental Clearance(s), if any, granted for mining of slate in the State of Meghalaya. In case no such EC has been issued by them the same shall also be intimated to the Committee.
- (v) The North eastern Regional Directorate of the CPCB shall provide to the Committee a copy of data which formed the basis for making a submission before the Committee while preparing its First Interim Report, to the effect that the two integrated cement units of Star Cement Limited (*viz.* Star Cement Limited and Star Cement Meghalaya Limited) use coal of about 15% of total clinker production. The CPCB may also provide the reasons for discrepancy between the said information provided in December 2018 and the information provided vide letter dated 13.09.2019 wherein it has been stated that actual requirement of coal by these cement plants is even less than self-declared quantity of 12.75% of clinker production.

**2.2.21** The North Eastern Regional Office of the MoEFCC, GoI vide a communication dated 11.10.2019 informed the Committee that as per records available with them no EC has been issued by the MoEFCC or SEIAA for mining of Slate in the State of Meghalaya.

**2.2.22** The North Eastern Regional Directorate of the CPCB vide a communication dated 11.10.2019 informed the Committee as below:

- (i) While preparing the Interim Report about the coal consumption by the cement plants in Meghalaya, Mr. P. Chakraborty, Unit Head of Calcom Cement India Ltd. (CCIL), a subsidiary of Dalmia Cement (Bharat) Limited, located at Umrangsoo, Assam was consulted for getting a neutral feedback. He was consulted because of his working experience and vast knowledge about clinker production in North East. It was reported by him that the coal requirement for clinker production stands at about 15% of total clinker production in general. This figure may vary about depending on the calorific value of the coal being used. Similar percentage coal consumption figure data is also supported by data available in the internet.

- (ii) During the detailed audit of cement plants in the State of Meghalaya regarding coal consumption, it was observed that the units started using alternate fuel to a significant extent which would bring down the consumption of coal further. Moreover, published paper by *Mishra & Ghosh (1996)* reported very high calorific value of Eocene and Oligocene coal found in Meghalaya in the range of 6500 - 8500 and 6255 - 8650 Kcal/ Kg respectively. It is understood that if coal with such high calorific value is used for clinker production together with other alternate fuel like slate, plastic waste, wood-dust etc., the coal consumption percentage will come down even below 12.75%, as reported in their earlier report.

**2.2.23** The MSPCB vide a communication dated 30.09.2019 provided to the Committee Environmental Statement of nine cement plants (*viz.* Amrit Cement Limited, Green Valley Industries Limited, Hills Cements Company Limited, Jaintia Cements Limited, JUD Cements Limited, Meghalaya Cements Limited, Dalmia Cements (Bharat Limited), Gold Stone Cements Limited and Mawmluh Cherra Cements Limited). Environmental Statement of both Cement Manufacturing Plants and a Thermal Power Plant of the Star Cement Limited and its subsidiaries had already been provided to the Committee by the MSPCB vide letter dated 13.09.2019.

**2.2.24** During Eighteenth Sitting of the Committee held on 16.08.2019, the Commissioner and Secretary to the Government of Meghalaya, Mining and Geology Department informed the Committee that slate is a minor mineral. He further stated that collection and sharing of royalty on minor minerals in the Autonomous District was done under the power of the Executive Order No. TAD/FR/22/55 dated 22.01.1962 till framing of Meghalaya Minor Mineral Concession Rules, 2016 (MMMCR). The said rules came into force on 12.09.2016. He further stated that grant of mining lease/quarry permit for slate was not there till Meghalaya Minor Mineral Concession Rules, 2016 came into force.

**2.2.25** The Commissioner and Secretary to the Government of Meghalaya, Mining and Geology Department further informed the Committee that no mining lease has been granted so far for extraction of slate in the State. He further stated that local suppliers have supplied the slate sourced from overburden of coal mining carried out prior to ban imposed by Hon'ble NGT to the Cement plants. The Cement plants

have paid royalty on slate used by them. He further stated that the amount of royalty paid by the Star Cement Limited and its subsidiaries for slate is as below:

Name and address of Cement or Thermal Power Plant	Date of Payment	Amount Paid (Rs.)	Qty. of Slate (MT)
Star Cement Limited	08.10.2018	1,84,14,900	4,09,220.000
	12.02.2019	43,75,111	97,224.690
	12.02.2019	12,12,000	12,120
	<b>TOTAL</b>	<b>2,40,02,011</b>	<b>5,18,564</b>
Star Cement Meghalaya Limited	10.08.2018	4,82,26,500	10,71,700.000
	12.02.2019	1,23,13,667	2,73,637.060
	12.02.2019	21,32,000	21,320.00
	<b>TOTAL</b>	<b>6,26,72,167</b>	<b>13,66,657.060</b>
Meghalaya Power Ltd.	08.10.2018	3,14,18,100	6,98,180.010
	12.02.2019	8,32,100	8321.000
	18.02.2019	93,27,040	2,07,267.550
	<b>TOTAL</b>	<b>4,15,77,240</b>	<b>9,13,768.560</b>
<b>GRAND TOTAL</b>		<b>12,82,51,418</b>	<b>27,98,989.62</b>

**2.2.26** The Committee after examination of the matter frames following questions:

1. Whether the specific coal requirement of afore-mentioned Cement Manufacturing Plants and a Thermal Power Plant of the Star Cement Limited and its subsidiaries is substantially lower than specific coal requirement stated in the respective TEFRRs?
2. What is the actual specific coal requirement for the afore-mentioned Cement Manufacturing Plants and a Thermal Power Plant of the Star Cement Limited?
3. Whether it is technically feasible to use huge quantity of slate in lieu of coal without making any modification in design of these Plants?
4. Whether the afore-mentioned Plants of Star Cement Limited and its subsidiaries have actually used huge quantity of alternate fuel (*i.e.* Slate) in lieu of coal?

5. Whether slate, if used, has been used after obtaining all requisite regulatory approvals?

**Question No. 1.**

**2.2.27** As per the TEFR, the specific coal requirement of Mawmluh Cherra Cement Limited is 16%. However, as per details given in para 1.2.3 and 1.2.5 above, the actual specific coal requirement of the Mawmluh Cherra Cement Limited (MCCL), which uses the same relatively high calorific value Meghalaya coal, as is being used by Cement Manufacturing Plants and Thermal Power Plants of the Star Cement Limited and its subsidiaries is 28.876%. Specific coal requirement of Cement Plants of Star Cement Limited which uses the coal of almost similar quality as is being used by MCCL located in Meghalaya can-not be much lower than the specific coal requirement for the MCCL.

**2.2.28** As per the TEFR, the specific coal requirement of the 43 MW unit of the Meghalaya Power Limited is 0.70 kg/kwh. However, as per the Environmental Statement submitted by the Meghalaya Power Limited to the MSPCB, the actual specific fuel consumption for the said 43 MW Thermal Power Plant during the year 2015-16, 2016-17 and 2017-18 is 0.909 kg/kwh, 0.986 kg/kwh and 0.717 kg/kwh respectively. Similarly, as per the Environmental Statement submitted to the MSPCB by the Meghalaya Power Limited, the actual specific fuel consumption for the 8 MW unit of their Thermal Power Plant during the year 2014-15 and 2015-16 is 0.799 kg/kwh and 0.800 kg/kwh respectively. As per the Environmental Statement submitted by the Star Cement Limited to the MSPCB, during the year 2016-17 its cement plant consumed 1,21,803.193 MT of coal to produce 5,67,241 MT tonnes of clinker. The specific coal requirement for its cement plant during 2016-17 was 21.47%.

**2.2.29** Calorific value of Eocene and Oligocene coal deposit of Meghalaya in the range of 6500 – 8500 and 6255 – 8650 kcal/kg respectively reported in a published Journal, which formed the main basis for the North Eastern Regional Directorate of the CPCB to suggest that the actual specific coal requirement for cement manufacturing plants of the Star Cement Limited is less than the same stated in the respective TEFR, is for a coal sample collected on dry mineral-matter-free basis (*i.e.* for a sample of dry coal free from moisture and any other impurity). The coal actually available in the market does contain substantial quantity of moisture as

well as impurities, including the slate. The actual average calorific value of the Meghalaya coal available in the market is therefore; much lower than the calorific value reported in the said journal.

**2.2.30** While preparing the First Interim Report of the Committee in December 2018, the North Eastern Regional Directorate of the CPCB, after consulting one Mr. P. Chakraborty, Unit Head of Calcom Cement India Ltd. (CCIL), a subsidiary of Dalmia Cement (Bharat) Limited, located at Umrangsoo, Assam, which also uses the comparatively higher calorific value coal available in the North Eastern India, as is being used by Cement Plants of Star Cement Limited and other cements plants including a Cement Manufacturing plant of the Dalmia Cement (Bharat) Limited located in Meghalaya, has reported to the Committee that actual specific coal requirement for Cements Plants of Star Cement Limited is 15%.

**2.2.31** In paragraph 1 of the 'Guidelines on Co-processing in Cement/Power/ Steel Industry' issued by the CPCB in February, 2010, a copy of the which has been placed before the Committee by North Eastern Regional Directorate of the CPCB, it has been stated that 40 million tonnes of coal is required to produce 200 million tomes of cement in the entire country. The specific coal consumption for the cement industry for the country as a whole, as per the said Guidelines, is 20%.

**2.2.32** Keeping in view the above, the Committee is of the view that actual specific coal requirement of Cement Manufacturing Plants and a Thermal Power Plant of the Star Cements Limited and its subsidiaries is higher than the same stated in the respective TEFRs.

#### **Question No. 2**

**2.2.33** As per details given in para 2.28, the Meghalaya Power Limited in the Environmental Statement submitted to the MSPCB has reported that specific coal consumption of its Thermal Power Plant varied from 0.717 kg/kwh to 0.986 kg/kwh, the Committee is of the view that average actual specific coal requirement of the Thermal Power Plants of the Meghalaya Power Limited is about 0.850 kg/kwh.

**2.2.34** For assessment of actual specific coal consumption of the Cement Plants of the Star Cement Limited and it subsidiary, the Committee took note of the followings:

- (i) Specific coal consumption for the cement industry for the country as a whole, as per information available in the Guidelines on Co-processing in Cement/Power/ Steel Industry' issued by the CPCB in February, 2010 is 20%;
- (ii) Average specific coal consumption for a similar Cement Plant of MCCL located in Meghalaya using almost similar quality of coal as is being used by cement plants of the Star Cement Limited and its subsidiaries, is 28.876%;
- (iii) As per the Environmental Statement submitted by the Star Cement Limited to the MSPCB, during the year 2016-17 its cement plant consumed 1,21,803.193 MT of coal to produce 5,67,241 MT tonnes of clinker. The specific coal requirement for the said cement plant of the Star Cement Limited during 2016-17, as per the information by Star Cement Limited itself was 21.47%;
- (iv) As per information obtained by North Eastern Regional Directorate of CPCB from one Mr. Mr. P. Chakraborty, Unit Head of a similar cement plant located in adjoining areas of Assam using almost similar quality of coal as is being used by cement plants of Star Cement Limited and its subsidiaries, average specific coal consumption of cement plants in the Region is about 15%.

**2.2.35** The Committee after examination of facts given in para 2.234 above, is of the view that the actual specific coal consumption for cement plants of Star Cement Limited and its subsidiaries located in Meghalaya is atleast 15% of the weight of clinker produced.

**Question No. 3:**

**2.2.36** All the cement manufacturing plants and thermal power plants of Star Cement Limited and its subsidiaries in Meghalaya have been designed to use locally sourced coal from the Meghalaya as a fuel. Even if the physical characteristics of the slate are similar to coal, use of slate having very low calorific value in place of high calorie coal requires modifications/changes in design of the plant, especially the components of the plants dealing with handing, processing, grinding and storage of fuel. The Star Cement Limited in their representation dated 26.07.2019 has categorically stated that no such modifications have been made in design of their cement and power plants. As per the information provided by Star Cement Limited during the year 2018-19 their cement plant used 10,989 MT coal and 1,01,129 MT slate. The Committee is of the view that even after modifications it is not feasible to achieve the required kiln temperature with such a low calories fuel mix.

2.2.37 Keeping in view the above, the Committee is of the view that except the small quantity of slate already mixed in the locally mined coal, it is not feasible to run the cement and thermal power plants of the Star Cement Limited by replacing about three-fourth of their coal requirement by a non-fuel mineral such as slate, as is being claimed by the Star Cement Limited.

**Question No.4**

2.2.38 The Star Cement Limited has claimed that huge quantity of slate has been used in-lieu of coal by all its Cement Manufacturing and Thermal Power Plants located in the State of Meghalaya. However, use of slate has not been reported in majority of Environmental Statements submitted by them to CPCB. In majority of these reports, use of coal as a fuel has only been reported. The Committee during its visit to fuel depot of the Meghalaya Power Limited on 12.11.2019 did not see any slate. During the visit, representative of the Meghalaya Power Limited also did not report to the Committee that a major part of the energy requirement of their plants is met from slate, as is now being claimed by them.

2.2.39 The Star Cement Limited at page 13 of their Annual Report for the year 2017-18 has prominently highlighted that its coal is accessed from 10-20 kilometres. Nowhere in any of the Annual Report it has been stated that about three-fourth of the energy requirement of their huge Cement Manufacturing Plants and Thermal Power Plants has been met by a non-fuel mineral (*viz.* slate).

2.2.40 It has also been claimed by the Star Cement Limited in their said representation dated 26.07.2019 that slate has been sourced from overburden dumps produced during excavation of coal. Except for a small quantity of overburden generated during creation of box-cutting, rat-hole mining does not involve generation of overburden. The Winning of lakhs of metric tonnes of slate from the overburden dumps, as has been claimed by the Star Cement Limited and other Cement Manufacturers and Thermal Power Plants, does not seem feasible. No such large overburden dumps having the capacity to allow extraction of several lakh tonnes of slates have been detected by the North Eastern Space Application Centre (NESAC) while undertaking land-use land-cover analysis of coal mining affected areas in Jaintia Hill districts.

2.2.41 Specific conditions no. (xi) (*viz. efforts shall be made to use low -grade lime, more fly ash and solid waste in cement manufacturing*) and no. (xii) (*viz. all efforts*)

*shall be made to use of high calorific hazardous waste in the cement kiln and necessary provision shall be made accordingly)* in the EC to Star Cement Meghalaya Ltd. issued by the MoEFCC, GoI vide letter dated 28.10.200 stipulates use of waste the said plant. The Committee after examination of six-monthly self-compliance reports to said EC, a copy of which is available on website of the Star Cement Limited, observed that in respect of the afore-mentioned condition no. (xi) it has been reported that *"SMCL is a clinkerization unit, no fly ash is used in the unit. The generated solid waste from the pollution control equipment has been recycled and re-used in the process and has been used for clinker manufacturing. Amount 8-10 % of low grade lime available in the mine has been used in the process"*. Similarly, in respect of the afore-mentioned specific condition no. (xii) it has been reported that *"Provision already made to use of high calorific waste i.e. waste oil in the kiln. The tank capacity is 1000 litres. The used oil disposal process along with photograph has been submitted along with CREP in MoEF&CC, Shillong & New Delhi."* The Committee further noted that use of any alternate fuel, as is being claimed by the Star Cement Limited has not been reported anywhere in these self-compliance reports. The Committee also noted that even for the used oil, merely making a provision for its use and not any actual use has been reported in these self-compliance reports.

**2.2.42** Keeping in view the above, the Committee is of the view that **except for a small quantity of slate found mixed in the locally mined coal, the Cement Manufacturing Plants and Thermal Power Plants of the Star Cement Limited have not used slate as a fuel in lieu of coal.**

#### **Question No. 5**

**2.2.43** Slate is a fine-grained, foliated metamorphic rock that is created by the alteration of shale or mudstone by low-grade regional metamorphism. It is mainly used for roofing, flooring, and flagging because of its durability and attractive appearance. Slate is mainly a non-fuel mineral. As far as cement industries are concerned, the slate being originated from the shale may be used, to some extent, in place of shale. The composition of the slate does not make it possible to use it as a fuel in place of coal.

**2.2.44** Till the declaration of the slate as a minor mineral by the Ministry of Mines, Government of India vide Notification bearing S.O. No. 423 (E) dated 10.02.2015, the slate was classified as a major mineral. The slate along with shale is listed at Sl. No. (7) in Schedule II of the Meghalaya Minor Mineral Concession Rules, 2016 (MMMCR).

**2.2.45** Clause (d) in Section 3 of the Mines and Mineral (Development and Regulation) Act, 1957 provides that “mining operation” means any operations undertaken for the purpose of winning any mineral. Winning or obtaining of slate from any area, even from overburden dump, as has been claimed by the Star Cement Limited in their representation dated 26.07.2019, as per the said definition, attracts provisions of Section 4 of the MMDR Act, which mandates prior mining lease for any operation undertaken for the purpose of winning any mineral.

**2.2.46** The Meghalaya Minor Mineral Concession Rules, 2016, which came into force on 12.09.2016, provide an elaborate mechanism for grant of mining lease or quarry permit for mining/winning of minor mineral for use in an industry. A mining lease or a quarry permit for winning of a minor mineral, including slate, as per the MMMCR, can be granted only after a prior Environmental Clearance and ‘Consent to Establish’ is obtained from the concerned regulatory Authorities. Grant of mining lease also requires preparation of a detailed mining plan duly approved by the concerned competent authority in the Mining and Geology Department in Government of Meghalaya. It also requires prior approval of Central Government under the Forest (Conservation) Act, 1980 in case mining/winning of such mineral involves any forest land. Actual winning/mining of slate requires ‘Consent to Operate’ from the State Pollution Control Board. As per Rule 29 of the MMMCR, a person who undertakes mining operations (viz. respective lessee or the holder of quarry permit) is responsible for payment of royalty. As per the said rule, in case of a mining lease royalty is to be paid by the concerned lessee on a quarterly basis. Similarly, in case of a quarry, royalty is to be paid before transportation.

**2.2.47** The Commissioner and Secretary to the Government of Meghalaya, Mining and Geology Department has informed the Committee that no mining lease has been granted so far for extraction of slate in the State of Meghalaya. The North Eastern Regional Office of the MoEFCC, GoI has informed the Committee that the MoEFCC, GoI and the Meghalaya SEIAA have not granted any EC for mining of slate in the State. Similarly, the MSPCB has informed the Committee that so far no ‘Consent to



Operate' or 'Consent to Establish' has been granted by them to any person, firm or company for mining of Slate in the State of Meghalaya.

**2.2.48** The Commissioner and Secretary to the Government of Meghalaya, Mining and Geology Department has informed the Committee that the Star Cement Limited and its subsidiaries has paid an amount of Rs. 12.82 crore as royalty on 27.98 lakh MT state claimed to be used by their Cement Manufacturing Plants and Thermal Power Plant located in the State of Meghalaya. The entire royalty on slate has been paid during the year 2018 and 2019, much after the MMMCR came into force. Majority of the said royalty has been paid during the month of February 2019 after the resource (coal) audit of these companies was started by this Committee.

**2.2.49** The North Eastern Regional Directorate of CPCB, MSPCB and North Eastern Regional Office of the MoEFCC stated that the slate has been used by these plants in lieu of the coal in pursuance of (i) Guidelines on Co-processing in Cement/Power/ Steel Industry' issued by the CPCB in February, 2010; (ii) guidelines for Pre-processing and Co-Processing of the Hazardous Waste and other wastes in Cement Plants as per Hazardous and Other Waste (Management and Trans-Boundary Movement) Rules, 2016; and (iii) specific condition no. (xi) and (xii) as per details given in para 2.239 above stipulated in EC to Star Cement Meghalaya Ltd. issued by the MoEFCC, GoI vide letter dated 28.10.2009.

**2.2.50** The Committee after examination of the Guidelines on Co-processing in Cement/Power/ Steel Industry' issued by the CPCB in February, 2010 noted that the said guidelines contains an exhaustive list of waste materials covered by these guidelines. The slate does not find a place in the said list. Similarly, the Committee after examination of the guidelines for Pre-processing and Co-Processing of the Hazardous Waste and Other Wastes in Cement Plants as per Hazardous and Other Waste (Management and Trans-Boundary Movement) Rules, 2016 noted that these guidelines are applicable to the use of only the 'hazardous waste' and 'other waste' respectively defined in clause 17 and 23 of sub-rule (1) of rule 3 of the said rules. The slate, as per these definitions, is neither a 'hazardous waste' nor an 'other waste'. No Authorization from the MSPCB for use of slate, as is required for use of any hazardous or other waste has been obtained by the Star Cement for any of its Cement Manufacturing Plants and a Thermal Power Plant. **In any case, the slate**

being listed in schedule-II to the MMMCR, which as per the Star Cements Limited has the potential to replace three-fourth of the coal requirement for their huge Cement Manufacturing Plants and a Thermal Power Plant, can-not be classified as a waste.

2.2.51 As far as use of slate in compliance of the conditions stipulated in EC to Star Cement Meghalaya Ltd. issued by the MoEFCC, GoI vide letter dated 28.10.2009 is concerned, as stated in para 2.2.39 above, use of any alternate fuel, as is being claimed by the Star Cement Limited has not been reported anywhere in the six-monthly self-compliance reports to the said EC, a copy of which is available on website of the Star Cement Limited.

2.2.52 Keeping in view the above, the Committee is of the view that, the slate, if used, by the Cement Manufacturing Plants and Thermal Power Plant of the Star Cement Limited and its subsidiaries located in the State of Meghalaya, the same has been used in flagrant violation and contravention of the mining, environmental and pollution control laws as all such slate has admittedly been extracted without obtaining requisite Mining Lease, Consent to Establish, Consent to Operate and Environmental Clearance. If such use of slate, as claimed by Star Cement Limited has happened in the State, it must have caused huge damage to flora, fauna, rivers, streams, water bodies and the environment in general as all such slate has admittedly been extracted in a totally unregulated manner without any measure to mitigate its adverse impacts on the environment.

### **Conclusion**

2.2.53 After examination of the afore-mentioned questions, the Committee is of the view that it is neither technically feasible nor legally permissible to replace more than seventy percent of the coal required to produce reported quantity of clinker and the electricity by Cement Manufacturing Plants and Thermal Power Plants of the Star Cement Limited and its subsidiaries located in the State of Meghalaya during the Audit Period by a non-fuel mineral (*viz.* slate), as is being claimed by the Star Cements Limited. The Committee is of the view that the Star Cement Limited and its subsidiaries have purchased illegally mined coal in the name of slate to

circumvent the ban imposed by the Hon'ble NGT on illegal rat-hole coal mining in the State of Meghalaya and also to evade payment of Royalty, Contribution to Meghalaya Environment Protection and Restoration Fund (MEPRF), Goods and Service Tax, Contribution to District Mineral Fund (DMF) and other statutory duties.

**2.2.54** Even for the sake of an argument it is assumed that the claim of these plants that more than 72% of their coal requirement during the audit period has been met by a non-fuel mineral slate without making any change/modification in the design of these plants is true, it would have caused equal, if not more, damage to the flora, fauna, rivers, streams, water bodies and the environment in general in the State of Meghalaya as all such slate has admittedly been mined in an unscientific and haphazard manner without any mitigative measures and without obtaining mandatory mining lease, consent to establish, consent to operate, environmental clearance and authorisation/no-objection certificate from the State Pollution Control Board in a flagrant violation of the existing mining, environmental and labour safety laws

**2.2.55** Year-wise gaps in quantity of coal required to produce the reported quantity of clinker (@ 15 % as given in para 2.2.35 above) and electricity power (@ 0.850 kg/kwh as given in para 2.2.33 above) and the coal procured by Star Cement Limited and its subsidiaries from legal sources are as below:

Plant	Items	Year					Total
		2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7	8
Star Cement Limited	Clinker produced (MT)	3,30,010	4,92,055	5,67,241	5,15,350	6,00,025	25,04,681
	Coal required (MT)	49,502	73,808	85,086	77,303	90,004	3,75,702
	Coal procured (MT)	13,417	47,628	10,192	25,267	10,989	1,07,493
	Gap (MT)	36,085	26,180	74,894	52,036	79,015	2,68,209

Plant	Items	Year					Total
		2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7	8
Star Cement Meghalaya Limited	Clinker produced (MT)	15,49,349	16,29,025	15,79,345	15,41,945	14,36,600	77,36,264
	Coal required (MT)	2,32,402	2,44,354	2,36,902	2,31,292	2,15,490	11,60,440
	Coal procured (MT)	58,448	1,48,954	9,775	67,624	84,188	3,68,989
	Gap (MT)	1,73,954	95,400	2,27,127	1,63,668	1,31,302	7,91,451
Meghalaya Power Limited	Power Produced (Million kwh)	167.92	183.11	201.62	190.06	170.12	913.00
	Coal required (MT)	1,42,732	1,55,644	1,71,377	1,61,551	1,44,602	7,75,906
	Coal procured (MT)	25,182	68,092	41,863	36,129	18,024	1,89,290
	Gap (MT)	1,17,550	87,552	1,29,514	1,25,422	1,26,578	5,86,616
Total for above three plants	Coal required (MT)	4,24,636	4,73,806	4,93,365	4,70,145	4,50,096	23,12,047
	Coal procured (MT)	97,047	2,64,674	61,830	1,29,020	1,13,201	6,65,772
	Gap (MT)	3,27,589	2,09,132	4,31,535	3,41,125	3,36,895	16,46,275

### 2.3 Amrit Cement Limited and its Captive Thermal Power Plant

2.3.1 An Integrated Clinker cum Cement Manufacturing Plant of Amrit Cement Limited having installed capacity to produce 2,000 TPD clinker is located at Umlaper Village in East Jaintia Hills District in Meghalaya. It also has a Captive Thermal Power Plant having 12 MW installed capacity. Both these Clinker Manufacturing Plant and the Captive Thermal Power Plant were commissioned in the year 2012.

2.3.2 As per the information/documents provided to the Committee by the Amrit Cement Limited, year-wise quantities of clinker and power produced and the coal procured by the Amrit Cement Limited to produce such clinker and thermal power during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Clinker produced (MT)	3,07,286	4,03,205	4,25,842	4,01,497	5,40,902	20,78,732
Power Produced (in Million kwh)	44.976	54.197	49.257	46.977	77.392	272.799
Coal Procured (MT)	3,861	88,165	38,785	74,978	31,833	2,37,622

2.3.3 The Amrit Cement Limited has informed the Committee that during the Audit Period they have also procured alternate fuel. Except slate, nature of any other alternate fuel purchased by the Amrit Cement Limited has however been not intimated to the Committee. The MSPCB has informed the Committee that no authorization/non-objection certificate has been granted by the Board to the Amrit Cement Limited for use of any alternate fuel. The Commissioner and Secretary to the Government of Meghalaya, Mining and Geology Department informed the Committee that no royalty has been paid by Amrit Cement Limited on the slate claimed to be used by them during the Audit period. Year-wise quantities of the slate claimed to be purchased by the Amrit Cement Limited during the Audit Period are as below:

(Metric Tonne)

Year					Total
2014-15	2015-16	2016-17	2017-18	2018-19	
23,033	28,977	1,29,698	-	-	1,81,708

**2.3.4** The Committee, based on a detailed analysis of a similar claim of the Star Cement Limited on use of slate as an alternate fuel in lieu of coal, as given in para 2.2.26 to 2.2.52, is of the view that it is neither technically feasible nor legally permissible for the Amrit Cement Limited to replace more than half of their coal requirement by a non-fuel mineral such as slate.

**2.3.5** The Committee after examination of a Techno-Economic Feasibility Report (TEFR) for the said 0.61 million tonnes per annum (MTPA) clinker and 0.66 MTPA cement (PPC) greenfield cement project with 1 X 12 MW Captive Thermal Power Plant of Amrit Cement Limited prepared by RCV Consulting noted that the said clinker production unit, as per the said TEFR, has been designed to use Meghalaya coal having the estimated net calorific value of 6,000 Kcal/kg as fuel. It has also been stated in the said TEFR that several small collieries are in operation in the Khliehriat and Sutnga coalfields which are at a distance of about 25-30 km from the proposed plant site. The specific heat consumption, as per the said TEFR, for the said clinker production unit is, 750 kcal/ kg of clinker produced. The specific coal requirement for the said clinker manufacturing plant, as per the said TEFR is therefore 12.50 % of the weight of the clinker produced. After examination of the Environmental Statements submitted by the Amrit Cement Limited to the MSPCB, a copy of which has been provided to the Committee by the MSPCB, the Committee observed that quantity of coal actually consumed by the said Cement Manufacturing Plant and Thermal Power Plant has not been indicated in any of these Statements. For the detailed reasons given in para 2.2.35 above, the Committee is of the view that actual specific coal consumption for clinker manufacturing plant of the Amrit Cement Limited is atleast 15%.

**2.3.6** The Committee further noted that it has been stated in the said TEFR that 100 % fuel proposed for the captive power plant shall be coal from Khliehriat/ Sutnga area in Meghalaya. The boiler of the said captive power plant, as per the said TEFR, is suitable to accept E-grade coal with ash content upto 45 %. It has also been stated in the said TEFR that for every fifteen days the said plant will require about 4,000 MT of coal. The specific coal requirement for the said Captive Power Plant, as per the said information, is therefore about 1.20 kg/kwh. The Committee however is

of the view that the actual specific coal requirement for the said Captive Thermal Power Plant is same as the specific coal requirement of the Thermal Power Plant of the Star Cement Limited i.e. 0.850 kg/kwh.

2.3.7 Year-wise gaps in the quantity of coal required to produce the reported quantity of clinker (@ 15 % as given in para 2.3.5) and electricity power (@ 0.850 kg/kwh as given in para 2.3.6) and the coal procured by Amrit Cement Limited from legal sources during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Clinker produced (MT)	3,07,286	4,03,205	4,25,842	4,01,497	5,40,902	20,78,732
Power Produced (Million kwh)	44.976	54.197	49.257	46.977	77.392	272.799
Coal required to produced clinker (MT)	46,093	60,481	63,876	60,225	81,135	3,11,810
Coal required to produce Power (MT)	38,230	46,067	41,868	39,930	65,783	2,31,879
Total Coal Required (MT)	84,323	1,06,548	1,05,745	1,00,155	1,46,919	5,43,689
Coal Procured (MT)	3,861	88,165	38,785	74,978	31,833	2,37,622
Gap (MT)	80,462	18,383	66,960	25,177	1,15,086	3,06,067

## 2.4 Dalmia Cement (Bharat) Limited and its Captive Thermal Power Plant

2.4.1 An Integrated Clinker cum Cement Manufacturing Plant having an installed capacity to 1.30 MTPA clinker and 1.50 MTPA Cement was established by M/s. Adhunik Cement Ltd. at Thangskai Village in East Jaintia Hills District. It also has a Captive Thermal Power Plant of 25 MW installed capacity. Both Clinker Manufacturing Plant and the Captive Thermal Power Plant were commissioned in

the year 2010. Later on, both the Cement Manufacturing Plant and the captive Thermal Power Plant were acquired by the Dalmia Cements (Bharat) Limited.

**2.4.2** As per the information/documents provided to the Committee by the Dalmia Cement (Bharat) Limited, year-wise quantities of the clinker and the power produced and the coal procured by the Dalmia Cement (Bharat) Limited to produce such clinker and thermal power during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
Clinker produced (MT)	6,68,239	7,32,700	7,92,075	9,00,686	10,84,883	<b>41,78,583</b>
Power Produced (in Million kwh)	117.403	108.108	88.733	102.485	110.108	<b>526.84</b>
Coal and Pet Coke Procured (MT)	17,433	98,296	56,208	1,07,092	54,478	<b>3,33,507</b>

**2.4.3** It has also been stated in documents submitted to the Committee by the Dalmia Cement (Bharat) Limited that in addition to the above, alternate fuel has also been used. These alternate fuels, as per the information provided by the Dalmia Bharat Cement Limited, include saw dust, agro-waste, slate *etc.* Quantity of these alternate fuels claimed to be used by the Dalmia Bharat Cement Limited during the Audit Period has not been provided to the Committee.

**2.4.4** It has also been stated in documents provided to the Committee by the Dalmia Bharat Cement Limited that applicable taxes, duties and royalties have been paid on these alternate fuel. The Commissioner and Secretray to the Government of Meghalaya, Mining and Geology Department informed the Committee that Dalmia Cement (Bharat) Limited on 08.02.2019 paid an amount of Rs. 4.10 crore to the Mining and Geology Department, Government of Meghalaya as royalty on 9.12 lakh metric tonnes of slate claimed to be consumed by them. It is worthwhile to note that the entire royalty on the slate claimed to be consumed by the Dalmia Cement (Bharat) Limited was paid on 08.02.2019 after the resource (coal) audit of Cement

Manufacturing Plants and Thermal Power Plants in Meghalaya was initiated by the Committee. The MSPCB has informed the Committee that the MSPCB vide letter dated 01.12.2017 has granted authorization/ no-objection certificate for use of pet-coke by the Dalmia Cement (Bharat) Limited. The Same was renewed on 27.11.2018. Apart from the pet-coke, the MSPCB vide letter dated 19.04.2017 granted authorization to the Adhunik Cement Ltd. (now Dalmia Cement (Bharat) Limited) for use of eight non-hazardous waste (viz. rice hay, rice husk, whole tyre, tyre chips, wood chips, saw dust, textile paper and paper waste). The MSPCB informed the Committee that the Dalmia Cement (Bharat) Limited neither sought nor received any authorization from the MSPCB for use of slate in its Cement Manufacturing Plant and Thermal Power Plant.

**2.4.5** The Committee, based on a detailed analysis (given in para 2.2.26 to 2.2.52) of a similar claim of the Star Cement Limited on use of alternate fuel in lieu of coal is of the view that it is neither technically feasible nor legally permissible for the Dalmia Cement (Bharat) Limited to replace more than two-third of their coal requirement, as is being claimed by them, by any alternate fuel.

**2.4.6** The Dalmia Cement (Bharat) Limited informed the Committee that copy of the Detailed Project Report (DPR) of Adhunik Cement Limited, which now stand merged with Dalmia Cement (Bharat) Limited, is not available with them. It was also informed by the Dalmia Cement (Bharat) Limited that they are trying to obtain a copy of the same from the concerned banker. Though the Dalmia Cement (Bharat) Limited assured the Committee that they will submit the DPRs as and when the same can be obtained, the Committee till the finalization of this report did not receive a copy of the said DPR. The Dalmia Cement (Bharat) Limited also informed the Committee that average estimated quantity of coal and/or any other alternate fuel(s) required to produce one tone of clinker and one unit (kwh) of power will primarily depend on the calorific value of coal/any other alternate fuel. They further informed that there is very high variation in various kinds of fuel used and therefore there is no standard per ton usage which can be estimated as it varies from year to year.

2.4.7 In the absence of the DPR and input on specific fuel consumption from the Dalmia Cement (Bharat) Limited, it is not possible for the Committee to correctly assess the specific fuel requirement for the Cement Manufacturing Plant and Thermal Power Plant of the Dalmia Cement (Bharat) Limited. The Committee therefore is of the view that specific fuel requirements of the Cement Manufacturing Plant and Captive Thermal Power Plant of the Dalmia Cement (Bharat) Limited are same as the specific fuel requirements of the similar plants the Star Cement Limited (*viz.* 15 % of the clinker produced and 0.850 kg/kwh of the power produced).

2.4.8 Year-wise gaps in quantity of coal required to produce the reported quantity of clinker (@ 15 % as given in para 2.4.7) and electricity power (@ 0.850 kg/kwh as given in para 2.4.7) and the coal procured by the Dalmia Cement (Bharat) Limited from legal sources during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Clinker produced (MT)	6,68,239	7,32,700	7,92,075	9,00,686	10,84,883	<b>41,78,583</b>
Power Produced (Million kwh)	117.403	108.108	88.733	102.485	110.108	<b>526.837</b>
Coal required to produced clinker (MT)	1,00,236	1,09,905	1,18,811	1,35,103	1,62,732	<b>6,26,787</b>
Coal required to produce Power (MT)	99,793	91,892	75,423	87,112	93,592	<b>4,47,811</b>
Total Coal Required (MT)	2,00,028	2,01,797	1,94,234	2,22,215	2,56,324	<b>10,74,599</b>
Coal and Pet Coke Procured (MT)	17,433	98,296	56,208	1,07,092	54,478	<b>3,33,507</b>
Gap (MT)	1,82,595	1,03,501	1,38,026	1,15,123	2,01,846	<b>7,41,092</b>

## 2.5 Goldstone Cement Limited and its Captive Thermal Power Plant

**2.5.1** An Integrated Clinker cum Cement Manufacturing Plant having an installed capacity of 0.56 MTPA clinker and 0.88 MTPA cement was established by M/s. Goldstone Cements Limited in Musiang Lamare (Old) village in East Jaintia Hills District. It also has a Captive Thermal Power Plant of 10 MW installed capacity. Both the Clinker Manufacturing Plant and the Captive Thermal Power Plant were commissioned on 02.07.2016.

**2.5.2** As per the information/documents provided to the Committee by the Goldstone Cements Limited, year-wise quantity of clinker and power produced and the coal procured by the Goldstone Cements Limited to produce such clinker and thermal power during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
2	3	4	5	6	7	8
Clinker produced (MT)	Nil	Nil	1,52,995	3,99,197	4,82,500	<b>10,34,692</b>
Power Produced (in Million kwh)	Nil	Nil	14.251	50.881	71.846	<b>136.978</b>
Coal Procured (MT)	Nil	Nil	5,918	21,295	4,946	<b>32,159</b>

**2.5.3** The Goldstone Cements Limited has informed the Committee that during the Audit Period they have also procured alternate fuel such as Muslate/Saw Dust etc. The MSPCB has informed the Committee that the no authorization/non-objection certificate has been granted by the Board to the Goldstone Cement Limited for use of any alternate fuel. The Commissioner and Secretary to the Government of Meghalaya, Mining and Geology Department informed the Committee that the Goldstone Cements Limited has paid an amount of Rs. 2.93 crores to the State of Meghalaya as a royalty on 6,51,134 MT slate claimed to be consumed by them. The Committee noted that the entire amount of royalty was paid on 15.02.2019 after resource (coal) Audit of Cement Manufacturing Plants and Thermal Power Plants in



the State of Meghalaya was initiated by the Committee. Year-wise details of alternate fuel claimed to be purchased by the Goldstone Cements Limited during the Audit Period are as below:

*(Metric Tonne)*

Year					Total
2014-15	2015-16	2016-17	2017-18	2018-19	
Nil	Nil	99,242	2,65,532	2,57,928	<b>6,22,702</b>

**2.5.4** The Committee, based on a detailed analysis of a similar claim of the Star Cement Limited on use of alternate fuel in lieu of coal, as given in para 2.2.26 to 2.2.52, is of the view that it is neither technically feasible nor legally permissible for the Amrit Cement Limited to replace about ninety percent of their coal requirement by any alternate fuel.

**2.5.5** The Committee after examination of the Techno-Economic Feasibility Report for setting up of the 2615 TPD Green Field Cement Plant of Goldstone Cements Ltd. at village Musiang Lamare in East Jaintia Hill district observed that the said plant has been designed to use the coal available in command area of the site (i.e. local Meghalaya Coal). As per the said report, the average estimated requirement of coal for the said plant is 18% of the weight of clinker produced.

**2.5.6** Even after a specific request, the Goldstone Cement Limited did not provide a copy of the Techno-Economic Feasibility Report (TEFR) for their Captive Thermal Power Plant. The Goldstone Cements Limited informed the Committee that specific fuel requirements for their captive Thermal Power Plant is 0.50 to 0.70 kg of coal per kwh and 1.25 to 1.60 kg of alternate fuel such as slate, bamboo, saw dust, wood chips etc. per kwh. No documentary evidence in support of these claims regarding specific fuel requirement were provided to the Committee by the Goldstone Stone Cement Limited. The Committee is therefore of the view that specific fuel requirement of the Captive Thermal Power Plant of the Goldstone Cement Limited is same as the specific fuel requirement of the similar plant of the Star Cement Limited (*viz.* 0.850 kg/kwh of the power produced).

2.5.7 Year-wise gaps in quantity of coal required to produce the reported quantity of clinker (@ 18 % as given in para 2.5.5) and electricity power (@ 0.850 kg/kwh as given in para 2.5.6) and the coal procured by Goldstone Cement Limited from legal sources during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Clinker produced (MT)	Nil	Nil	1,52,995	3,99,197	4,82,500	10,34,692
Power Produced (Million kwh)	Nil	Nil	14.251	50.881	71.846	136.978
Coal required to produced clinker (MT)	Nil	Nil	27,539	71,855	86,850	1,86,245
Coal required to produce Power (MT)	Nil	Nil	12,113	43,249	61,069	1,16,431
Total Coal Required (MT)	Nil	Nil	39,652	1,15,104	1,47,919	3,02,676
Coal Procured (MT)	Nil	Nil	5,918	21,295	4,946	32,159
Gap (MT)	Nil	Nil	33,734	93,809	1,42,973	2,70,517

## 2.6 Green Valley Industries Limited

2.6.1 An Integrated Clinker cum Cement Manufacturing Plant having an installed capacity of 1300 TPD Cement (expandable to 2600 TPD cement) was established by Green Valley Industries Limited at Nongsning village in East Jaintia Hills District. The said plant was commissioned in the year 2010.

2.6.2 As per the information/documents provided to the Committee by the Green valley Industries Limited, year-wise quantities of the clinker produced and the coal procured by the Green Valley Industries Limited to produce such clinker during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Clinker produced (MT)	3,88,036	3,68,412	3,83,369	4,31,151	4,35,984	20,06,952
Coal procured (MT)	44,844	50,555	46,762	51,068	30,278	2,23,507

**2.6.3** It has also been stated in documents submitted to the Committee by the Green Valley Industries Limited that apart from the coal they have also used slate as an alternate fuel. Year-wise details of alternate fuel claimed to be purchased by the Green Valley Industries Limited during the Audit Period are as below:

(Metric Tonne)

Year					Total
2014-15	2015-16	2016-17	2017-18	2018-19	
17,105	18,280	28,221	35,020	49,122	1,12,363

**2.6.4** The MSPCB has informed the Committee that the no authorization/non-objection certificate has been granted by the Board in favour of the Green Valley Industries Limited for use of slate as an alternate fuel. The Commissioner and Secretary to the Government of Meghalaya, Mining and Geology Department informed the Committee that the Green Valley Industries Limited has paid an amount of Rs. 78.80 lakh to the State of Meghalaya as a royalty on 1.62 lakh MT slate claimed to be consumed by them. The Committee noted that the entire amount of royalty was paid in the month of July 2019 much after resource (coal) Audit of Cement Manufacturing Plants and Thermal Power Plants in the State of Meghalaya was initiated by the Committee.

**2.6.5** The Committee, based on a detailed analysis (given in para 2.2.26 to 2.2.52) of a similar claim of the Star Cement Limited on use of alternate fuel in lieu of coal, is of the view that it is neither technically feasible nor legally permissible for the Green Valley Industries Limited to replace more than thirty percent of their coal requirement, as is being claimed by them, by a non-fuel mineral such as slate.

**2.6.6** The Committee after examination of a Techno-Economic Feasibility Report (TEFR) for the said 1300 TPD expandable to 2600 TPD Greenfield Cement Project of the Green Valley Industries Limited prepared by Holtec Consulting Private Limited, observed that the said clinker cum cement manufacturing plant of the Green Valley Industries Limited has been designed to use 100 % Meghalaya coal having a net calorific value of 6,000 Kcal/kg being exploited by locals in the areas around Khliehriat and Sutnga, which are located at a distance of about 18 km and 28 km respectively from the plant site as a fuel. The specific heat consumption, as per the said TEFR, for the said clinker production unit is 780 kcal/ kg of clinker produced. The specific coal requirement for the said clinker manufacturing plant, as per the said TEFR is 13.00 %.

**2.6.7** After examination of the Environmental Statements submitted by the Green Valley Industries Limited to the MSPCB, a copy of which has been provided to the Committee by the MSPCB, it has been observed that quantity of coal actually consumed by the said Cement Manufacturing Plant has not been indicated in any of these Statements. For the detailed reasons given in para 2.2.35 above, the Committee is of the view that actual specific coal consumption for clinker manufacturing plant of the Green Valley Industries Limited is atleast 15%.

**2.6.8** Year-wise gaps in quantity of coal required to produce the reported quantity of clinker (@ 15 % as given in para 2.6.7) and the coal procured by Green Valley Industries Limited from legal sources during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Clinker produced (MT)	3,88,036	3,68,412	3,83,369	4,31,151	4,35,984	<b>12,50,504</b>
Coal required to produced clinker (MT)	58,205	55,262	57,505	64,673	65,398	<b>1,87,576</b>
Coal Procured (MT)	44,844	50,555	46,762	51,068	30,278	<b>1,28,108</b>
Gap (MT)	13,361	4,707	10,743	13,605	35,120	<b>59,468</b>

## 2.7 Hill Cement Company Limited

2.7.1 An Integrated Clinker cum Cement Manufacturing Plant having an installed capacity of 2,500 TPD clinker and 3,000 TPD Cement was established by Hill Cement Company Limited at Mynkree village in East Jaintia Hills District. The said plant was commissioned in the year 2007.

2.7.2 As per the information/documents provided to the Committee by the Hill Cement Company Limited, year-wise quantities of the clinker produced and the coal procured by the Hill Cement Company Limited to produce such clinker during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Clinker produced (MT)	1,22,646	2,14,389	2,56,984	2,03,999	2,33,902	10,31,920
Coal procured (MT)	-	11,989	9,797	2,248	13,347	37,381

2.7.3 It has also been stated in documents submitted to the Committee by the Hill Cement Company Limited that apart from the coal they have also used slate as an alternate fuel. Year-wise quantities of slate claimed to be purchased by the Hill Cement Company Limited during the Audit Period are as below:

(Metric Tonne)

Year					Total
2014-15	2015-16	2016-17	2017-18	2018-19	
29,228	-	1,61,688	-	-	1,90,916

2.7.4 The MSPCB has informed the Committee that the no authorization/non-objection certificate for use of slate has been granted by the Board in favour of the Hill Cement Company Limited. The Commissioner and secretary to the Government of Meghalaya, Mining and Geology Department informed the Committee that the Hill Cement Company Limited did not make payment of royalty to the State of Meghalaya on the slate claimed to be utilized by them.

2.7.5 The Committee, based on a detailed analysis (given in para 2.2.26 to 2.2.52) of a similar claim of the Star Cement Limited on use of alternate fuel in lieu of coal, is of the view that it is neither technically feasible nor legally permissible for the Hill Cement Limited to replace more than three-fourth of their coal requirement, as is being claimed by them, by a non-fuel mineral such as slate.

2.7.6 The Committee after examination of a Detailed Project Report of the aforementioned Cement Manufacturing Plant of the Hill Cement Company, a copy of which was provided to the Committee, noted that it does not contain anything on the nature as well as per unit requirement of the fuel for the said plant. The Committee after examination of the Environmental Statements of the said Cement Manufacturing Plant of the Hills Cement Company Limited for the years 2013-14, 2014-15 and 2014-15, a copy of which was provided to the Committee by the MSPCB, observed that quantity of coal actually consumed by the said Cement Manufacturing Plant and Thermal Power Plant has not been indicated in any of these Statements. For the detailed reasons given in para 2.2.35 above, the Committee is of the view that actual specific coal consumption for clinker manufacturing plant of the Hill Cement Company Limited is atleast 15%.

2.7.8 Year-wise gaps in quantity of coal required to produce the reported quantity of clinker (@ 15 % as given in para 2.7.7) and the coal procured by Hill Cement Company Limited from legal sources during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Clinker produced (MT)	1,22,646	2,14,389	2,56,984	2,03,999	2,33,902	10,31,920
Coal required to produced clinker (MT)	18,397	32,158	38,548	30,600	35,085	1,54,788
Coal Procured (MT)	0	11,989	9,797	2,248	13,347	37,381
Gap (MT)	18,397	20,169	28,751	28,352	21,738	1,17,407

## 2.8 Jaintia Cement Limited

2.8.1 An Integrated Clinker cum Cement Manufacturing Plant having an installed capacity of 150 TPD cement was established by Jaintia Cements Limited in Latyrke village in East Jaintia Hills District. Commercial production in the said cement plant started in the year 1992.

2.8.2 During sixteenth Sitting of the Committee held on 23.07.2019 a representative of the Jaintia Cement Limited informed the Committee that the Jaintia Cement Limited does not use coal as a fuel. He informed the Committee that the entire fuel requirement for the said plant is met from the coke breeze sourced from Assam. He further informed the Committee that during the Audit Period the Jaintia Cement Limited produced 1,00,153 MT clinker by consuming 26,203.11 MT Coke Breeze. The average per unit requirement of Coke Breeze is 26.163 % (i.e. 261.63 kg Coke Breeze per tonne of Clinker).

2.8.3 The Committee in the said Meeting advised the North Eastern Regional Directorate of the CPCB to undertake audit of each of the Coke Plants from which the coke has reportedly been sourced by the Jaintia Cement Limited and submit a report to the Committee within one month. The said report is awaited from North Eastern Regional Directorate of the CPCB.

## 2.9 JUD Cements Limited

2.9.1 An Integrated Clinker cum Cement Manufacturing Plant having an installed capacity of 900 TPD clinkerization facility and 1,350 TPD cement grinding unit was established by JUD Cement Limited at Wahiajer (Narpuh) village in East Jaintia Hills District. The said plant commenced its production in November 2009.

2.9.2 As per the information/documents provided to the Committee by the JUD Cement Limited, year-wise quantities of the clinker produced and the coal reportedly consumed by the JUD Cement Limited to produce such clinker during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Clinker produced (MT)	1,80,367	2,33,961	1,45,419	1,71,206	1,24,702	<b>8,55,655</b>
Coal consumed procured (MT)	-	16,348	2,099	377	370	<b>19,194</b>

**2.9.3** It has also been stated in documents submitted to the Committee by the JUD Cement Limited that apart from the coal they have also used Coke Breeze, soft coke and diesel as alternate fuels. Year-wise quantities of coke breeze, soft coke and diesel claimed to be consumed by the JUD Cements Limited during the Audit Period are as below:

Nature of Fuel	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
Coke Breeze (MT)	9,120	0	0	23	67	<b>9,210</b>
Soft Coke (MT)	0	0	6,055	10,875	8,560	<b>25,490</b>
Diesel (KL)	37.40	21.45	21.01	24.92	34.34	<b>139.12</b>

**2.9.4** The MSPCB has informed the Committee that the no authorization/non-objection certificate has been granted by the Board in favour of the JUD Cement Limited for use of the coke breeze or the soft coke or the diesel as an alternate fuel. In none of the Environmental Statement of the JUD Cement Limited for the years 2013-14, 2014-15 and 2015-16, a copy of which was provided to the Committee by the MSPCB, use of diesel as an alternate fuel has been reported by the JUD Cements Limited.

**2.9.5** The Committee after examination of a Techno-Economic Feasibility Report (TEFR) for the said Cement cum Clinker manufacturing plant of the JUD Cement Limited prepared by West Bengal Consultancy organization Limited, Kolkata, a copy

of which was provided to the Committee by JUD Cements Limited, noted that the said clinker production unit, as per the said TEFR, has been designed to use Meghalaya coal to be procured from locally available coal base. It has also been stated in the said TEFR that these are locally owned small mines available in the area and substandard in quality compared to coal available in ECL, BCCL, CCL, MCL etc. It has also been stated in the said TEFR that coal is the main fuel for manufacture of cement in India. The consumption of coal in a typical dry process system, as per the said TEFR, ranges from 20-25% of clinker production. In the documents submitted to the Committee by the JUD Cements Limited it has been stated that specific fuel requirement of the said clinker manufacturing plant of the JUD Cement Limited is 16.50 %. The Committee is therefore of the view that specific coal requirement of the said Clinker Manufacturing Plant of the JUD Cements Limited is 16.50%.

**2.9.6** Year-wise gaps in quantity of coal required to produce the reported quantity of clinker (@ 16.50 % as given in para 2.9.5) and the coal procured by the JUD Cement Limited during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Clinker produced (MT)	1,80,367	2,33,961	1,45,419	1,71,206	1,24,702	<b>8,55,655</b>
Coal required to produced clinker (MT)	29,761	38,604	23,994	28,249	20,576	<b>1,41,183</b>
Coal consumed (MT)	0	16,348	2,099	377	370	<b>19,194</b>
Gap (MT)	29,761	22,256	21,895	27,872	20,206	<b>1,21,989</b>

## 2.10 Meghalaya Cements Limited and its Captive Thermal Power Plant

**2.10.1** An Integrated Clinker cum Cement Manufacturing Plant of Meghalaya Cement Limited having installed capacity to produce 2,600 TPD cement is located at

Thangskai village in in East Jaintia Hills District of Meghalaya. The original plant having installed capacity to produce 900 TPD cement was commissioned in 2006. Later on, in the year 2011 installed capacity of the said plant was enhanced to 2,600 TPD. A Captive Thermal Power Plant of the Meghalaya Cement Limited having 10 MW installed capacity is also located adjacent to its said Cement Manufacturing Plant.

**2.10.2** As per the information/documents provided to the Committee by the Meghalaya Cement Limited, year-wise quantities of clinker and power produced and the coal procured by the Meghalaya Cements Limited to produce such clinker and the electrical power during the Audit Period are as below:

Plant	Items	Year					Total
		2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7	8
Clinker/ Cement Plant	Clinker produced (MT)	7,98,378	8,43,815	6,96,071	8,39,931	8,38,237	<b>40,16,432</b>
	Coal procured (MT)	77,457	29,899	30,881	35,220	34,317	<b>2,07,774</b>
Captive Thermal Power Plant (TPP)	Power Produced (Million kwh)	27.738	54.472	58.191	68.590	69.887	<b>278.88</b>
	Coal procured (MT)	19,076	14,787	15,087	18,792	19,670	<b>87,412</b>
Total for the Clinker/ Cement and TPP	Coal procured (MT)	96,533	44,686	45,968	54,012	53,987	<b>2,95,186</b>

**2.10.3** The Meghalaya Cement Limited has informed the Committee that during the Audit Period they have also procured alternate fuel slate. Year-wise quantities of slate used by Meghalaya Cements Limited in its Cement Manufacturing Plant and the Captive Thermal Power Plant were however not provided to the Committee.

The MSPCB informed the Committee that the Meghalaya Cements Limited neither sought nor received any certificate of registration/authorization from the MSPCB for use of slate in its Cement Manufacturing Plant and Thermal Power Plant. The Commissioner and Secretary to the Government of Meghalaya, Mining and Geology informed the Committee that the Meghalaya Cement Limited, during the months of March and July 2017 has paid an amount of Rs. 1.00 crore to the State of Meghalaya as a royalty on 2.23 lakh MT slate claimed to be consumed by them.

**2.10.4** The Committee, based on a detailed analysis of a similar claim of the Star Cement Limited on use of slate as an alternate fuel in lieu of coal, as given in para 2.2.26 to 2.2.52, is of the view that it is neither technically feasible nor legally permissible for the Amrit Cement Limited to replace more than half of their coal requirement by a non-fuel alternate fuel such as slate..

**2.10.5** The Committee after examination of the Techno-Economic Feasibility Report of the Augmentation of the Clinkerization capacity of the plant from 900 TPD to 2,600 prepared by Holtec Consulting Private Limited, a copy of the which was provided to the Committee by the Meghalaya Cement Limited, observed that the said plant has been designed to use 100% Meghalaya coal available locally. As per the said report, net calorific value of the local coal to be used in the clinker plants is 5,800 Kcal/kg. It has also been stated in the said reports that specific heat consumption of these plants is 840 Kcal per kg of clinker. The average estimated requirement of coal as per the information given in the said report is 14.66 %. For the detailed reasons given in para 2.2.35 above, the Committee is of the view that actual specific coal consumption for clinker manufacturing plant of the Meghalaya Cement Limited is at-least 15%.

**2.10.6** The Committee after examination of the Techno-Economic Feasibility Report of the 10 MW capacity Captive Power Plant prepared by AKB Power Consultants Pvt. Ltd., a copy of the which was provided to the Committee by the Meghalaya Cement Limited, observed that the said plant was envisaged to use coal sourced from Western parts of Meghalaya Hills. The Annual requirement of the locally sourced Meghalaya coal at 100 % capacity for the said 10 MW TPP, as per the said

report, is 63,072 MT. The specific fuel requirement for the said TPP, as per these information given in the said report, is therefore 0.72 kg/kwh. Nowhere, in the said report it has been stated that it will be feasible to run the said Thermal Power Plant by using any alternate fuel other than coal. The Committee is of the view that specific fuel requirement of the Captive Thermal Power Plant of the Meghalaya Cement Limited is same as the specific fuel requirement of the similar plant of the Star Cement Limited (*viz.* 0.850 kg/kwh of the power produced).

**2.10.7** The year-wise gaps in quantity of coal required to produce the reported quantity of clinker (@ 15 % as given in para 2.10.5) and electricity power (@ 0.850 kg/kwh as given in para 2.10.6) and the coal procured by the Meghalaya Cements Limited from legal sources during the Audit Period are as below:

Plant	Items	Year					Total
		2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7	8
Clinker/ Cement Plant	Clinker produced (MT)	7,98,378	8,43,815	6,96,071	8,39,931	8,38,237	<b>40,16,432</b>
	Coal required (MT)	1,19,757	1,26,572	1,04,411	1,25,990	1,25,736	<b>6,02,465</b>
	Coal procured (MT)	77,457	29,899	30,881	35,220	34,317	<b>2,07,774</b>
	Gap (MT)	42,300	96,673	73,530	90,770	91,419	<b>3,94,691</b>
Captive Thermal Power Plant (TPP)	Power Produced (Million kwh)	27.738	54.472	58.191	68.59	69.887	<b>278.878</b>
	Coal required (MT)	23,577	46,301	49,462	58,302	59,404	<b>2,37,046</b>
	Coal procured (MT)	19,076	14,787	15,087	18,792	19,670	<b>87,412</b>
	Gap (MT)	4,501	31,514	34,375	39,510	39,734	<b>1,49,634</b>
Total for the Clinker/ Cement and TPP	Coal required (MT)	1,43,334	1,72,873	1,53,873	1,84,291	1,85,140	<b>8,39,511</b>
	Coal procured (MT)	96,533	44,686	45,968	54,012	53,987	<b>2,95,186</b>
	Gap (MT)	46,801	1,28,187	1,07,905	1,30,279	1,31,153	<b>5,44,325</b>

## 2.11 Virgo Cements Limited

2.11.1 An Integrated Clinker cum Cement Manufacturing Plant having an installed capacity of 1,060 TPD clinker and 1,452 TPD of Cement has been established by Virgo Cements Limited at Dams village in North Garo Hill district of Meghalaya.

2.11.2 The Virgo Cements Limited informed the Committee that no coal is used in their said plant as it has a Vertical Shaft Kiln (VSK) where low ash metallurgical (LAM) coke or coke breeze is used as a fuel.

2.11.3 The Committee after examination of the Techno-Economic Feasibility Report for expansion of the said plant to 1060 TPD capacity prepared by Ercom Engineers Pvt. Limited, a copy of which was provided to the Committee by the Virgo Cements Limited, observed that the said plant was envisaged to use coke breeze to be sourced from nearby area of the Guwahati as a fuel. Specific fuel requirement for the said plant, as per the said report, is 0.289 tonnes of coke breeze per tonne of clinker or 28.90 %.

2.11.4 The Committee after examination of the matter is prima-facie of the view that Virgo Cement Limited did not use illegally mined local coal during the Audit Period. The Committee however advised the North Eastern Regional Directorate of the CPCB to undertake an audit to ascertain that coke breeze or LAM coke originating from legal source has only been used by the said Plant.

## 2.12 RNB Cement Limited

2.12.1 An Integrated Clinker cum Cement Manufacturing Plant having an installed capacity of 600 TPD cement along with a 10 MW capacity Captive Thermal Power Plant was established by RNB Cement Limited at Barapani Industrial area in Ri-Bhoi District of Meghalaya in the year 2008.

2.12.2 The North East Regional Directorate of the CPCB informed the Committee that the RNB Cement Limited will not be able to provide any information or document as the plant has been taken over by the National Company Law Tribunal (NCLT) and is present managed by an Interim Resolution Professional (IRP) *w.e.f.*

13.06.2019. Information about the quantities of clinker and thermal power produced and the quantity of coal purchased by the RNB Cement Limited during the Audit Period could not be obtained by the Committee. In the absence of these information it is not feasible for the Committee to undertake Resource (coal) Audit of the RNB Cements Limited.

### 2.13 Captive Thermal Power Plant of Shyam Century Ferrous Limited

2.13.1 A Captive Thermal Power Plant of the Shyam Century Ferrous Limited having installed capacity of 13.80 MW is located in Export Promotion Industrial Park (EPIP) Byrnihat in Ri-Bhoi district of Meghalaya.

2.13.2 As per the information/documents provided to the Committee by the Shyam Century Ferrous Limited, year-wise quantities of power produced and the coal procured by the Shyam Century Ferrous Limited to produce such power during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Power Produced (Million kwh)	64.117	55.246	104.403	68.898	34.702	327.366
Coal procured (MT)	43576	32461	72086	13704	4960	1,66,787

2.13.3 The Shyam Century Ferrous Limited has informed the Committee that during the Audit Period they have also procured and utilised in the said Captive Thermal Power Plant alternate fuel. Year-wise quantities of alternate fuel claimed to be purchased by Shyam Century Ferrous Limited during the audit period are as below:

(metric tonne)

Year					Total
2014-15	2015-16	2016-17	2017-18	2018-19	

1	2	3	4	5	6
446	-	-	-	29	475

**2.13.4** Keeping in view that quantity of alternate fuel claimed to be purchased by Shyam Century Ferrous Alloy Limited is very low, the Committee decided to ignore the same in this resource (coal) audit.

**2.13.5** The Committee after examination of the Detailed Project Report (DPR) for the said 13.80 MW Captive Power Plant prepared by AKB Power Consultants Private Limited, a copy of which was provided to the Committee by Shyam Century Limited, observed that the said plant was designed to use both biomass fuel (with estimated calorific value of 3,500 Kcal/kg) and locally sourced Meghalaya coal (with estimated calorific value of 5,500 Kcal/kg). The annual requirement of fuel by the said plant at 100% capacity is 77,616 MT of biomass fuel and 14,256 MT of Meghalaya coal. The specific fuel requirement of the said plant, as per the said report, is thus 0.527 kg/kwh of coal or 0.827 kg/ kwh of biomass.

**2.13.6** It has also been stated in the documents handed over to the Committee by the Shyam Century Ferrous Limited that specific fuel requirement of their said Captive Thermal Power Plant is 0.50- 0.70 kg of coal per kwh and 1.00 -1.40 kg of alternate fuel such as coke fine, Tamilnadu Charcoal fines etc. per kwh.

**2.13.7** Keeping in view the detailed analysis given in para 2.2.33 and also keeping in view that though the said Thermal Power Plant has been designed to use alternate fuels other than coal, the Shyam Century Ferrous Alloy Limited has himself reported that during the entire Audit Period 475 MT alternative fuel has only been used by them, the Committee is of the view that specific coal requirement of the said Captive Thermal Power Plant of the Shyam Century Limited is atleast equal to specific coal requirement of the a Thermal Power Plant of much larger capacity of the Star Cement Limited located in Meghalaya (*viz.* 0.850 kg/kwh of the power produced).

**2.13.8** The year-wise gaps in quantity of coal required to produce the reported quantity of the electrical power (@ 0.850 kg/kwh as given in para 2.13.7) and the

coal procured by Shyam Century Ferrous Limited from legal sources during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Power Produced (Million kwh)	64.117	55.246	104.403	68.898	34.702	<b>327.366</b>
Coal required (MT)	54,499	46,959	88,743	58,563	29,497	<b>2,78,261</b>
Coal procured (MT)	43,576	32,461	72,086	13,704	4,960	<b>1,66,787</b>
Gap (MT)	10,923	14,498	16,657	44,859	24,537	<b>1,11,474</b>

#### 2.14 Captive Thermal Power Plant of Maithan Alloys Limited

**2.14.1** A Captive Thermal Power Plant of the Maithan Alloy Limited having installed capacity of 15 MW is located in Export Promotion Industrial Park (EPIP) Byrnihat in Ri-Bhoi district of Meghalaya.

**2.14.2** As per the information/documents provided to the Committee by the Maithan Alloys Limited, year-wise quantities of power produced and the coal procured by the Maithan Alloys Limited to produce such power during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Power Produced (Million kwh)	62.588	49.241	97.440	89.061	33.493	<b>331.823</b>
Coal procured - Within Meghalaya (MT)	77,573	51,318	61,950	64,595	6,384	<b>2,61,820</b>
Coal procured - Outside Meghalaya (MT)	-	-	929	36,692	14,345	<b>51,966</b>



Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Total Coal Procured (MT)	77,573	51,318	62,879	1,01,287	20,729	3,13,786

2.14.3 The Maithan Alloys Limited has informed the Committee that during the Audit Period they have also procured alternate fuel. Year-wise quantities of different types of alternate fuel claimed to be purchased by Maithan Alloys Limited during the Audit Period are as below:

(metric tonne)

Type of alternate fuel	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Rice Husk	-	-	-	5,039	1,973	7,012
Saw Dust	-	-	-	275	505	780
Coke Breeze	-	-	-	0	2,354	2,354
Wood Chips	-	-	-	0	60	60
<b>Total</b>	-	-	-	<b>5,314</b>	<b>4,892</b>	<b>10,206</b>

2.14.4 The Committee after examination of the Detailed Project Report (DPR) of the said 15 MW capacity Captive Thermal Power Plant of the Maithan Alloys Limited prepared by AKB Power Consultants Pvt. Ltd., a copy of which was provided to the Committee by the Maithan Alloys Limited, observed that the said plant has been designed to use both bamboo chips/dust (with estimated calorific value of 2914 K cal/kg) and locally sourced Meghalaya coal (with estimated calorific value of 7,142 K cal/kg). As per the said DPR, the annual requirement of fuel by the said plant at 100% capacity is 32,400 MT of bamboo chips and 37,800 MT of Meghalaya coal. The specific fuel requirement of the said plant as per the said report is therefore 0.527 kg/kwh of coal or 0.827 kg/ kwh of biomass. It has however been stated in

documents provided to the Committee by Maithan Alloys Limited that specific fuel requirement of the said TPP is 0.72 kg/kwh.

**2.14.5** As per the information provided by Maithan Alloys Limited, during the Audit Period the Maithan Alloy Limited purchased 3,13,785 MT coal to produce 331.823 Million units of power by the said 15 MW capacity Captive Thermal Power Plant. The actual specific fuel purchased for the said Captive Thermal Power Plant of Maithan Alloys Limited during the Audit Period is 0.945 kg/kwh. The same is comparable to or even higher than the estimated specific fuel consumption for other Thermal Power Plants located in the State of Meghalaya. Apart from the above, the Maithan Alloy Limited has claimed to purchase alternate fuel such as rice husk, saw dust, coke breeze and wood chips also. The Committee therefore is of the view that during the Audit Period Maithan Alloys Limited did not use any illegally mined local coal from the Meghalaya.

**2.15 Captive Thermal Power Plant of Shree Sakambari Ferro Alloys Pvt. Ltd.**

**2.15.1** A Captive Thermal Power Plant of Shree Sakambari Ferro Alloys Pvt. Ltd having installed capacity of 10 MW is located in Riwiang Village in West Khasi Hills District, Meghalaya. The said Thermal Power Plant was commissioned in the month of June 2014.

**2.15.2** As per the Environmental Statement Submitted by Shree Shakambari Ferro Alloys Pvt. Ltd. to the MSPCB the actual specific coal consumption of the said Captive Thermal Power Plant of Shree Sakambari Ferro Alloys Pvt. Ltd. during the Audit Period is as below:

(kg/kwh)

2014-15	2015-16	2016-17	2017-18	2018-19
1	2	3	4	5
0.83	0.85	0.85	0.81	0.85

**2.15.3** On perusal of information and documents received from Shree Shakambari Ferro Alloy Limited the Committee observed that unit of power produced by the

said Thermal Power Plant stated in the Statement provided to the Committee does not appear to be correct. The Committee also observed that the quantity of coal reported to be consumed by Shree Sakambari Ferro Alloys Pvt. Ltd., as per the Statement submitted to the Committee is substantially different than the quantity of coal reportedly consumed by the said Plant as per details given in a report on coal consumption by the Thermal Power Plants and Cement Industries submitted to the Committee by North Eastern Regional Directorate of CPCB. The Committee therefore advised the North Eastern Regional Directorate of CPCB to re-examine the records relating to purchase and use of coal by said Thermal Power Plant of Shree Sakambari Ferro Alloys Pvt. Ltd. and submit a report to the Committee. The said report is still awaited by the Committee.

## 2.16 Captive Thermal Power Plant of CMJ Breweries Private Limited

**2.16.1** A Captive Thermal Power Plant of the CMJ Breweries Private Limited having installed capacity of 3.50 MW is located in Export Promotion Industrial Park (EPIP) Byrnihat in Ri-Bhoi district of Meghalaya.

**2.16.2** As per the information/documents provided to the Committee by the CMJ Breweries Private Limited, year-wise quantities of power produced and the coal procured by the CMJ Breweries Private Limited to produce such power during the Audit Period are as below:

Items	Year					Total
	2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7
Power Produced (Million kwh)	5.746	7.925	4.329	8.597	6.260	<b>32.86</b>
Coal procured (MT)	15,232	16,606	10,874	15,738	2,985	<b>61,435</b>

**2.16.3** The CMJ Breweries Private Limited has informed the Committee that during the Audit Period they have also procured husk as an alternate fuel. Year-wise

quantities of rice husk claimed to be procured by CMJ Breweries Private Limited during the audit period are as below:

(metric tonne)

Year					Total
2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6
-	-	-	5,011	23,235	<b>28,246</b>

**2.16.4** The Committee after examination of the Detailed Project Report (DPR) of the CMJ Breweries Private Limited prepared by M/s. Suvidha Consultancy Limited, Guwahati noted that the said DPR does not contain anything about the nature and per unit requirement of the fuel. It has however been stated in documents provided to the Committee by the CMJ Breweries Private Limited that their Captive Thermal Power Plant has a back pressure turbine and the steam is mainly used for the process heating and the power is additionally generated using the same steam. So the fuel consumption in the back pressure turbine is not comparable to the conventional plant condensing type turbines. It has also been stated in these documents that average estimated quantity of fuel required to produce power in their said Captive Thermal Power Plant is 2.35 kg of coal per kwh or 3.50 kg of husk per kwh.

**2.16.5** The Committee noted that quantities of the coal and rice husk purchased by the CMJ Breweries Private Limited was sufficient to produce the power reportedly produced by the CMJ Breweries Private Limited during the audit period as per the reported specific fuel consumption of 2.35 kg of coal per kwh or 3.50 kg of husk per kwh. Subject to confirmation by the North Eastern Regional Directorate of the CPCB of the claim of the CMJ Breweries Private Limited regarding the use of rice husk as a fuel, the Committee is of the view that no illegally mined legal has been utilised by the CMJ Breweries Private Limited during the Audit Period.

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## CHAPTER 3: FINDINGS AND RECOMMENDATIONS

### 3.1 FINDINGS

3.1.1 Except for the clinker manufacturing plant of the Mawmluh Cherra Cement Limited (A State PSU) and Captive Power Plants of the Maithan Alloy Limited and the CMJ Breweries Private Limited, there is a huge gap in quantity of coal required to produce reported quantity of clinker and/or power and the coal reported to be purchased from legal sources during the Audit Period by all other Cement Manufacturing Plants and Thermal Power plants in the State of Meghalaya for which resource (coal) audit could be completed by the Committee. Year-wise quantities of the coal required to produce reported quantities of clinker and/or power, the coal actually purchased from legal sources and the gap between the two for each of these Plants are as below:

(metric tonnes)

Plant	Items	Year					Total
		2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7	8
Star Cement Limited and its two subsidiaries	Coal required*	4,24,636	4,73,806	4,93,365	4,70,145	4,50,096	23,12,048
	Coal procured**	97,047	2,64,674	61,830	1,29,020	1,13,201	6,65,772
	Gap	3,27,589	2,09,132	4,31,535	3,41,125	3,36,895	16,46,276
Amrit Cement Limited and its Captive TPP	Coal required*	84,323	1,06,548	1,05,745	1,00,155	1,46,919	5,43,690
	Coal procured**	3,861	88,165	38,785	74,978	31,833	2,37,622
	Gap	80,462	18,383	66,960	25,177	1,15,086	3,06,068
Dalmia Cement (Bharat) Limited and	Coal required*	2,00,028	2,01,797	1,94,234	2,22,215	2,56,324	10,74,598
	Coal procured**	17,433	98,296	56,208	1,07,092	54,478	3,33,507

Plant	Items	Year					Total
		2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7	8
its Captive TPP	Gap	1,82,595	1,03,501	1,38,026	1,15,123	2,01,846	7,41,091
Goldstone Cement Limited and its Captive TPP	Coal required*	0	0	39,652	1,15,104	1,47,919	3,02,675
	Coal procured**	0	0	5,918	21,295	4,946	32,159
	Gap	0	0	33,734	93,809	1,42,973	2,70,516
Green Valley Industries Limited	Coal required*	58,205	55,262	57,505	64,673	65,398	3,01,043
	Coal procured**	44,844	50,555	46,762	51,068	30,278	2,23,507
	Gap	13,361	4,707	10,743	13,605	35,120	77,536
Hill Cement Company Limited	Coal required*	18,397	32,158	38,548	30,600	35,085	1,54,788
	Coal procured**	0	11,989	9,797	2,248	13,347	37,381
	Gap	18,397	20,169	28,751	28,352	21,738	1,17,407
JUD Cements Limited	Coal required*	29,761	38,604	23,994	28,249	20,576	1,41,184
	Coal procured**	0	16,348	2,099	377	370	19,194
	Gap	29,761	22,256	21,895	27,872	20,206	1,21,990
Meghalaya Cements Limited and its Captive TPP	Coal required*	1,43,334	1,72,873	1,53,873	1,84,291	1,85,140	8,39,511
	Coal procured**	96,533	44,686	45,968	54,012	53,987	2,95,186
	Gap	46,801	1,28,187	1,07,905	1,30,279	1,31,153	5,44,325
Captive TPP of Shyam Century	Coal required*	54,499	46,959	88,743	58,563	29,497	2,78,261
	Coal	43,576	32,461	72,086	13,704	4,960	1,66,787

Plant	Items	Year					Total
		2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7	8
Ferrous Ltd.	procured**						
	Gap	10,923	14,498	16,657	44,859	24,537	1,11,474
TOTAL	Coal required*	10,13,183	11,28,007	11,95,659	12,73,995	13,36,954	59,47,798
	Coal procured**	3,03,294	6,07,174	3,39,453	4,53,794	3,07,400	20,11,115
	Gap	7,09,889	5,20,833	8,56,206	8,20,201	10,29,554	39,36,683

\*: Coal required to produce reported quantities of clinker and/or power

\*\* : Coal reported to be procured from legal sources

**3.1.2** The Committee is of the view that the entire gap of **39.37 lakh MT** between the quantity of the coal required to produce reported quantity of the clinker and the electrical power and the coal purchased from legal sources by these Plants during the Audit Period **constituting about two-third of the coal requirement of these plants during the Audit Period has been met from the illegally mined local coal.** Demand for a huge quantity of illegally mined coal from these plants has sustained and supported a wide scale illegal rat-hole coal mining in the State of Meghalaya in flagrant violation of a ban imposed by the Hon'ble NGT.

**3.1.3** Continuance of illegal rat-hole coal mining in the State of Meghalaya to meet the huge requirement of coal for these Cement Manufacturing Plants and the Thermal Power Plants have caused huge damage to flora, fauna, rivers, streams, water bodies and the environment in general in the State of Meghalaya. It has also made the ban imposed by the Hon'ble NGT on illegal rat-hole coal mining virtually inoperative.

**3.1.4** No royalty, taxes and any other statutory levies has been paid to the State of Meghalaya on the illegally mined coal utilised by these Cement Manufacturing Plants and Thermal Power Plants during the Audit Period resulting in a huge loss to the State exchequer. In fact ban on the illegal rat-hole coal mining in the State of

Meghalaya came as a boon to these Cement Manufacturing Plants and Thermal Power Plants in the State of Meghalaya as it virtually exempted them from the requirement of payment of royalty, taxes and other statutory levies payable on more than two-third of the coal consumed by them. The amounts of royalty (@ Rs. 675 per MT), contribution to Meghalaya Environment Protection and Restoration Fund (MEPR Fund) at the rate of Rs. 485 per MT and GST/VAT @ 5 % of the sale value of approx. Rs. 8,000 per MT amounting to Rs 400 per MT) payable on the illegally mined coal utilised by each of these Cement Manufacturing Plants and Thermal Power Plants during the Audit Period are as below:

(Amt.: Rupees in crore)

Sl. No.	Plant	Qt. of illegal coal used (MT)	Royalty	MEPRF	GST/ VAT	Total
1	2	3	4	5	6	7
1.	Star Cement Limited and its two subsidiaries	16,46,276	111.124	79.844	65.851	256.819
2.	Amrit Cement	3,06,068	20.660	14.844	12.243	47.747
3.	Dalmia Bharat Cement Ltd	7,41,092	50.024	35.943	29.644	115.610
4.	Goldstone Cement Ltd.	2,70,516	18.260	13.120	10.821	42.200
5.	Green Valley Industries Ltd.	77,536	5.234	3.760	3.101	12.096
6.	Hill Cement Ltd.	1,17,407	7.925	5.694	4.696	18.315
7.	JUD Cement Ltd.	1,21,990	8.234	5.917	4.880	19.030
8.	Meghalaya Cement Ltd.	5,44,325	36.742	26.400	21.773	84.915
9.	Shyam Century Ferrous Ltd.	1,11,474	7.524	5.406	4.459	17.390
<b>Total</b>		<b>39,36,684</b>	<b>265.726</b>	<b>190.929</b>	<b>157.467</b>	<b>614.123</b>

3.1.5 The royalty and VAT/GST amounting to Rs. 423.194 crore payable on illegally mined coal utilised by the Cement Manufacturing Plants and Thermal Power Plants, if realised and properly utilised, can significantly enhance living

standard of the tribal residents, especially those residing in the areas affected by such illegal coal mining, of the State. Similarly, an amount of Rs. 190.929 crore payable to MEPR Fund for the said illegally mined coal utilised by these Plants, if properly utilised, may greatly help in restoration of flora, fauna, rivers, streams, water bodies and the environment in general damaged by illegal rat-hole coal mining in the State of Meghalaya.

**3.1.6** Claim of these Cement Manufacturing Plants and Thermal Power Plants that about two-third of their coal requirement have been met by a non-fuel mineral (i.e. slate) without making any change in the design of these plants is not tenable. The Committee, based on a detailed analysis given in para 2.2.26 to 2.2.52, is of the view that it is neither technically feasible nor legally permissible for these plants to replace more than two-third of their coal requirement by a non-fuel mineral such as slate.

**3.1.7** These Plants have purchased illegally mined local coal in the name of slate to circumvent the ban imposed by the Hon'ble NGT on illegal rat-hole coal mining in the State of Meghalaya and also to evade payment of royalty, GST/VAT and other statutory levies and contribution to MEPR Fund on the coal utilised by them.

**3.1.8** Even for the sake of an argument it is assumed that the claim of these plants that more than two-third of their coal requirement during the Audit Period has been met by a non-fuel mineral (*viz.* slate) without making any change/modification in the design of these plants is true, it would have caused equal, if not more, damage to the flora, fauna, rivers, streams, water bodies and the environment in general in the State of Meghalaya as all such slate has admittedly been mined in an unscientific and haphazard manner without any mitigative measures and without obtaining mandatory mining lease, consent to establish, consent to operate, environmental clearance and authorisation/no-objection certificate from the State Pollution Control Board in a flagrant violation of the existing mining, environmental, pollution control and labour safety laws.

**3.1.9** Transportation and use of a huge quantity of illegally mined coal by these plants could not have escaped notice of regulatory authorities, both in the State of Meghalaya and the Union of India. It could not have escaped notice of the district

and police administration. Instead of taking actions to prevent use of illegally mined coal by these plants and to initiate appropriate proceedings under relevant provisions of the Mines and Minerals (Development and Regulation) Act, 1957; the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 against these Plants for use of illegally mined local coal, the regulatory authorities have tried to regularise/justify the use of illegally mined coal by accepting royalty on slate claimed to be used by these plants and by supporting the claim of these Plants that it is technically and legally feasible to replace two-third of the coal requirement of these plants by a non-fuel mineral such as slate and the slate can be used by these plants as a waste without obtaining any clearance under the Mines and Minerals (Development and Regulation) Act, 1957; the Water (Prevention and Control of Pollution) Act, 1974; the Air (Prevention and Control of Pollution) Act, 1981; the Environment (Protection) Act, 1986 and the rules, regulations & guidelines framed thereunder.

**3.1.10** As per information provided to the Committee by the Mining and Geology Department in the State of Meghalaya, none of these plants participated in a public auction conducted by the State of Meghalaya to sell more than 38,000 MT of seized coal available at locations in close vicinity of majority of these plants. The Committee therefore is of the view that a major part of the coal requirement of these plants is still being met from illegally mined local coal.

## **3.2 RECOMMENDATIONS**

**3.2.1** To put a stop to the illegal rat-hole mining of the coal being undertaken in the State of Meghalaya in flagrant violation of the mining, environmental and labour safety laws as well as the orders issued by the Hon'ble Supreme Court and the Hon'ble NGT to meet the requirement of the coal for the Cement Manufacturing Plants and Thermal Power Plants in the State of Meghalaya and also to restore damage caused the flora, fauna, rivers, streams, water bodies and environment in general by illegal rat-hole coal mining, the Committee recommends that the Hon'ble NGT may consider to issue the following directions:

1. The Chief Secretary of the State of Meghalaya shall undertake monthly review the quantity of clinker and/or power produced by each Cement Manufacturing Plants and Thermal Power Plant in the State of Meghalaya and the quantity of coal purchased by each such plant from legal sources to produce such reported quantities of clinker and/or power. Such review for a month shall be undertaken on or before tenth day of the next month. A quarterly report stating therein the month-wise quantities of clinker and/or power produced, quantity of coal consumed to produce such quantities of clinker and/or power by each such plant and action(s), if any, taken against any such plant in case of any anomaly observed during the review shall be submitted to this Tribunal by the Chief Secretary, Meghalaya. Such report for a quarter shall be submitted to this Tribunal on or before fifteenth day of the next quarter.
2. The State of Meghalaya; the Ministry of Environment, Forest and Climate Change, Government of India and the Meghalaya State Pollution Control Board shall initiate proceedings in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957; the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 the Environment (Protection) Act, 1986 and the rules, regulations & guidelines framed thereunder against each of the Cement Manufacturing Plants and the Thermal Power Plants who has used illegally mined local coal after a ban on the rat-hole coal mining in the State of Meghalaya was imposed by this Tribunal in the month of April, 2014.
3. The State of Meghalaya shall realise royalty, GST/VAT, contribution to the MEPR Fund and any other statutory tax and/levy payable on the illegally mined coal utilised by these Cement Manufacturing Plants and the Thermal Power Plants in the State of Meghalaya after the ban on illegal rat-hole mining in the State of Meghalaya was imposed by this Tribunal in April 2014.
4. To restore the damage caused to the flora, fauna, rivers, streams, water bodies and the environment in general by illegal rat-hole mining of coal and also to mitigate the suffering caused to the local tribal residents by the illegal rat-hole coal mining, the State of Meghalaya shall realise from each of the aforementioned Cement Manufacturing Plants and Thermal Power Plants who have



used illegally mined local coal after a ban on illegal rat-hole coal mining was imposed by this Tribunal in the month of April 2014, an amount of Rs. 400 per tonne of coal to be utilised by each such plants on or after the date of this order and deposit the same in the MEPR Fund. Such amount for coal utilised during a month shall be realised on or before fifteenth day of the next month. Not less than fifty percent of these amounts shall be utilised for restoration of damage caused to the flora, fauna, rivers, streams, water bodies and the environment in general by illegal rat-hole mining of the coal in the State of Meghalaya. The balance amounts shall be utilised for socio-economic development of the tribal residents in areas affected by the coal mining in the State of Meghalaya. It is clarified that the afore-mentioned amount of Rs. 400 per MT of coal shall be in addition the contribution to MEPRF at the rate of Rs. 485 per MT of coal already being realised by the State in compliance of earlier orders of this Tribunal. The Chief Secretary, Meghalaya shall formulate draft guidelines for utilisation of these amounts and place the same before the Committee constituted by this Tribunal under Chairmanship of Mr. Justice B.P. Katakey, former Judge, Guwahati High Court. The Committee shall within one month from the date of receipt, examine the draft guidelines and place the same along with the comments/observation before this Tribunal for approval.

5. The North Eastern Regional Directorate of the CPCB shall complete audit of coke claimed to be utilised by the Jaintia Cement Limited and the Virgo Cement Limited and submit a report to the Committee constituted by this Tribunal under Chairmanship of the Mr. Justice B.P. Katakey, former Judge, Guwahati High Court. The North Eastern Regional Directorate of the CPCB shall also submit the report sought by the said Committee in respect of the Captive Thermal Power Plant of Shree Shakambari Ferro Alloys Pvt. Ltd.

  
(Justice B.P. Katakey)  
Chairman

**ANNEXURE R-11**

DALMIA CEMENT ( BHARAT) LIMITED					
	2014-15	2015-16	2016-17	2017-18	2018-19
CLINKER PRODUCTION	668,239	732,700	792,075	900,686	1,084,883
POWER PRODUCTION	117,403	108,108	88,733	102,485	110,108
TOTAL PROCUREMENT OF COAL, SLATE & SAW DUST	125,978	249,590	152,156	299,757	284,337
TOTAL CONSUMPTION OF COAL, SLATE & SAW DUST IN KILN FOR CLINKER	122,037	124,961	108,286	141,707	157,972
TOTAL CONSUMPTION OF COAL, SLATE & SAW DUST IN CPP FOR POWER	117,212	104,269	68,849	93,291	103,283

For 2014-15 Coal &amp; Slate includes opening stock

DETAILS					
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COAL & PET COKE DETAILS	2014-15	2015-16	2016-17	2017-18	2018-19
OPENING	30,710	8,638	9,978	14,637	57,879
RECEIPT	17,433	98,296	56,784	107,092	54,478
CONSUMPTION IN KILN	25,517	62,789	45,373	57,714	74,657
CONSUMPTION IN CPP	13,987	34,167	5,734	-	815
MOISTURE LOSS	-	-	1,019	6,137	4,546
TRANSFER TO USO			576		
CLOSING STOCK	8,638	9,978	14,637	57,879	32,339

SLATE DETAILS	2014-15	2015-16	2016-17	2017-18	2018-19
OPENING	77,836	14,762	32,691	1,721	7,209
RECEIPT	141,927	151,294	93,904	181,618	213,359
CONSUMPTION IN KILN	96,520	62,172	61,759	79,752	77,368
CONSUMPTION IN CPP	103,225	70,102	63,115	91,923	101,032
MOISTURE LOSS	5,257	1,090	-	4,455	17,441
TRANSFER TO USO				-	8,063
CLOSING STOCK	14,762	32,691	1,721	7,209	16,663

SAW DUST DETAILS	2014-15	2015-16	2016-17	2017-18	2018-19
OPENING	-	-	-	314	539
RECEIPT			1,468	11,046	16,499
CONSUMPTION IN KILN			1,154	4,241	5,946
CONSUMPTION IN CPP				1,369	1,436
MOISTURE LOSS				5,212	7,725
TRANSFER TO USO					

	Slate	Saw dust
Procurement of AFR	859,938	29,013
Consumption	806,969	14,146
Kiln	377,572	11,341
CPP	429,397	2,805


CLOSING STOCK	-	-	314	539	1,930
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CONSUMPTION OF FUEL IN %					
	2014-15	2015-16	2016-17	2017-18	2018-19
PRODUCTION OF CLINKER	668,239	732,700	792,075	900,686	1,084,883
COAL, SLATE & SAW DUST CONSUMPTION FOR KILN	122,037	124,961	108,286	141,707	157,972
% OF USAGE	18%	17%	14%	16%	15%
	2014-15	2015-16	2016-17	2017-18	2018-19
POWER PRODUCTION	117,403	108,108	88,733	102,485	110,108
COAL, SLATE & SAW DUST CONSUMPTION FOR CPP	117,212	104,269	68,849	93,291	103,283
% OF USAGE	1.00	0.96	0.78	0.91	0.94

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GOVERNMENT OF MEGHALAYA  
DIRECTORATE OF MINERAL RESOURCES  
SHILLONG

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**ANNEXURE R-12**

No.DMR/MM/768/2018/Pt-II/ Vol-IV/196

Dated Shillong, the 19.02.2020

To,

Dalmia Cement (Bharat) Limited  
Umsoo Mootang, Thangskai  
P.O Lumshnong, East Jaintia Hills  
Meghalaya - 793210.

Sub:- Payment of Royalty, MEPRF on illegally source coal.

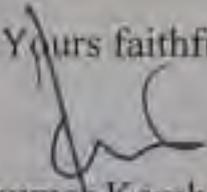
Sir/Madam,

In inviting a reference to the subject cited above, please find enclosed herewith Para-3.1.4 of the Fifth Interim Report of the Independent Committee on Resource (Coal) Audit of Cement Industries and Thermal Power Plants in Meghalaya submitted to the Hon'ble National Green Tribunal, Principal Bench, New Delhi on 02.12.2019. In this matter, you are directed to make the necessary payment as per the table enclose herewith within a month of issuance of this letter failing which necessary action as per law will be initiated.

Submitted for your information and necessary action.

Encl: As above

Yours faithfully

  
(Arunkumar Kembhavi, IAS)  
Director of Mineral Resources  
Meghalaya :: Shillong

No.DMR/MM/768/2018/Pt-II/ Vol-IV/196 - A

Dated Shillong, the 19.02.2020.

Copy to:-

1. The Chief Secretary to the Govt. of Meghalaya, Mining & Geology Department for kind information.
2. The Member Secretary, Hon'ble NGT Committee for kind information of the Hon'ble Chairman and Hon'ble Members of the NGT Committee.
3. The Secretary to the Govt. of Meghalaya, Mining & Geology Department for kind information.

  
Director of Mineral Resources  
Meghalaya :: Shillong.

Plant	Items	Year					Total
		2014-15	2015-16	2016-17	2017-18	2018-19	
1	2	3	4	5	6	7	8
THERMAL PLANT	procured**						
	Gap	10,923	14,498	16,657	19,839	24,337	1,11,474
TOTAL	Coal required*	10,13,163	11,26,007	12,95,639	12,71,893	17,16,938	59,47,798
	Coal procured**	3,03,294	6,07,174	3,49,452	4,51,794	1,97,800	20,11,110
	Gap	7,09,869	5,20,833	8,56,206	8,20,203	10,29,558	39,36,687

\* Coal required to produce reported quantities of clinker and/or power

\*\* Coal reported to be procured from legal sources

3.1.2 The Committee is of the view that the entire gap of 39.37 lakh MT between the quantity of the coal required to produce reported quantity of the clinker and the electrical power and the coal purchased from legal sources by these Plants during the Audit Period constituting about two-third of the coal requirement of these plants during the Audit Period has been met from the illegally mined local coal. Demand for a huge quantity of illegally mined coal from these plants has sustained and supported a wide scale illegal rat-hole coal mining in the State of Meghalaya in flagrant violation of a ban imposed by the Hon'ble NGT.

3.1.3 Continuance of illegal rat-hole coal mining in the State of Meghalaya to meet the huge requirement of coal for these Cement Manufacturing Plants and the Thermal Power Plants have caused huge damage to flora, fauna, rivers, streams, water bodies and the environment in general in the State of Meghalaya. It has also made the ban imposed by the Hon'ble NGT on illegal rat-hole coal mining virtually inoperative.

3.1.4 No Royalty, taxes and any other statutory levies has been paid to the State of Meghalaya on the illegally mined coal utilised by these Cement Manufacturing Plants and Thermal Power Plants during the Audit Period resulting in a huge loss to the State exchequer. In fact ban on the illegal rat-hole coal mining in the State of

Meghalaya came as a boon to these Cement Manufacturing Plants and Thermal Power Plants in the State of Meghalaya as it virtually exempted them from the requirement of payment of royalty, taxes and other statutory levies payable on more than two-third of the coal consumed by them. The amounts of royalty (@ Rs. 675 per MT), contribution to Meghalaya Environment Protection and Restoration Fund (MEPR Fund) at the rate of Rs. 485 per MT and GST/VAT @ 5 % of the sale value of approx. Rs. 8,000 per MT amounting to Rs 400 per MT) payable on the illegally mined coal utilised by each of these Cement Manufacturing Plants and Thermal Power Plants during the Audit Period are as below:

(Amt. in Rupees in crore)

Sl. No.	Plant	Qt. of illegal coal used (MT)	Royalty	MEPRF	GST/ VAT	Total
1	2	3	4	5	6	7
1	Star Cement Limited and its two subsidiaries	16,46,276	111.124	79.844	65.851	256.819
2	Amrit Cement	3,06,068	20.660	14.844	12.243	47.747
3	Dalmia Bharat Cement Ltd	7,41,092	50.024	35.943	29.644	115.610
4	Goldstone Cement Ltd.	2,70,516	18.260	13.120	10.821	42.200
5	Green Valley Industries Ltd.	77,536	5.234	3.760	3.101	12.096
6	Hill Cement Ltd.	1,17,407	7.925	5.694	4.696	18.315
7	JUD Cement Ltd	1,21,990	8.234	5.917	4.880	19.030
8	Meghalaya Cement Ltd.	5,44,325	36.742	26.400	21.773	84.915
9	Shyam Century Ferrous Ltd	1,11,474	7.524	5.406	4.459	17.390
	<b>Total</b>	<b>39,36,684</b>	<b>265.726</b>	<b>190.929</b>	<b>157.467</b>	<b>614.123</b>

3.1.5 The royalty and VAT/GST amounting to Rs 423.194 crore payable on illegally mined coal utilised by the Cement Manufacturing Plants and Thermal Power Plants, if realised and properly utilised, can significantly enhance living



भारत सरकार / Govt. of India  
 वित्त मंत्रालय / Ministry of Finance  
 राजस्व विभाग / Department of Revenue  
 केंद्रीय वस्तु एवं सेवा कर आयुक्त का कार्यालय  
 OFFICE OF THE COMMISSIONER OF CENTRAL GOODS & SERVICES TAX  
 क्रेसेन्स बिल्डिंग, महात्मा गांधी रोड, शिलांग - 793 001  
 CRESCENS BUILDING, M.G. ROAD, SHILLONG - 793 001



Hqrs. Anti-Evasion Unit, 2<sup>nd</sup> Floor, Crescens Building, M.G. Road, Shillong - 793 001  
 Tel +91-361-250 3161 E-Mail hqrs-ae-shg@gov.in

C.No. IV (16)04/AE/CGST/SH/2020

Dated:

SUMMONS

(Under Section 70 of the Central Goods & Services Tax Act, 2017)

To,

M/s Dalmia Cement (Bharat) Limited [formerly Adhunik Cement Limited],  
 Vill- Thangskai, P.O. Lumshnong,  
 District East Jaintia Hills,  
 Meghalaya - 793 200

Whereas a case against M/s M/s DALMIA CEMENT (BHARAT) LIMITED [FORMERLY ADHUNIK CEMENT LIMITED] (GSTIN-17AADCA9414C1Z0), having Principal Place of Business at Vill - Thangskai, P.O. Lumshnong East Jaintia Hills District, Meghalaya-793 200 about evasion of GST is being enquired by me under the provisions of the Central Goods & Services Tax Act, 2017.

And whereas I have reasons to believe that you are in possession of facts or/and documents and records, which are material to the above enquiry.

You are hereby summoned under Section 70 of the Central Goods & Services Tax Act, 2017, read with the CBEC's Circular No.3/3/2017-GST dated 05.07.2017, to submit soft copies of the documents as per schedule through e-mail at hqrs-ae-shg@gov.in by 29<sup>th</sup> June, 2020 and to appear before me in person or through an authorized representative on the 3<sup>rd</sup> July, 2020 at 13:00 hrs. in this office situated at 2<sup>nd</sup> Floor, Crescens Building, M.G. Road, Shillong, to give evidence truthfully on such matters concerning the enquiry/investigation as you may be asked, and to produce the documents and records mentioned in the Schedule for examination.

SCHEDULE

- (i) Details of payment made as royalty on coal (year-wise and month-wise)
- (ii) Details of Service Tax paid on Royalty on coal (year-wise and month-wise). If no Service Tax payment made, reasons thereof with supporting documents to be submitted.
- (iii) Details of GST paid on Royalty on coal (year-wise and month-wise). If no GST payment made, reasons thereof with supporting documents to be submitted.
- (iv) Details of Cess paid on coal (year-wise and month-wise). If no Cess payment made, reasons thereof with supporting documents to be submitted.
- (v) The amount of clinker produced (in metric tonnes) and coal procured (in metric tonnes) during the Financial Year 2019-20.
- (vi) Reference is also invited to this office letter of even number 710 dated 18.05.2020 issued by the Deputy Commissioner (Hqrs. Anti-Evasion Unit) on the same matter (copy enclosed)

If you fail to obey to this Summons and intentionally omit to attend to give evidence or make statements and/ or to produce the documents and things, you will be liable to be punished under the provisions of Section 174-175 of the I.P.C., 1860.

Given under my hand and seal on this 12<sup>th</sup> day of June, 2020.

*Stamp 12/6/2020*  
 (Hauzel Daniel)  
 Superintendent (Hqrs. Anti-Evasion Unit)  
 अधीक्षक (अपवचन-रोध)  
 Superintendent (Anti-Evasion)  
 केंद्रीय वस्तु एवं सेवा कर  
 Central Goods & Service Tax  
 Shillong

Note: Under sub-section (2) of Section 70 of the CGST Act, 2017, the above inquiry is deemed to be a 'judicial proceeding' within the meaning of Section 193 and Section 228 of the Indian Penal Code, 1860 according to which intentionally giving false evidence or fabricating false evidence for the purpose of being used in these proceedings is an offence punishable under Section 193 of the Indian Penal Code, 1860 and intentionally offering insult, or causing any interruption to the officer sitting in these proceedings is an offence punishable under Section 228 of the Indian Penal Code, 1860 (45 of 1860).



भारत सरकार / Govt. of India  
वित्त मंत्रालय / Ministry of Finance  
राजस्व विभाग / Department of Revenue

केंद्रीय वस्तु एवं सेवा कर आयुक्त का कार्यालय  
OFFICE OF THE COMMISSIONER OF CENTRAL GOODS & SERVICES TAX  
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CRESCENS BUILDING, M.G. ROAD, SHILLONG - 793 001



Hqrs. Anti-Evasion Unit, 2<sup>nd</sup> Floor, Crescens Building, M.G. Road, Shillong - 793 001

Tel: +91- 364 - 250 3161

E-Mail hqrs.ae-shg@gov.in

C.No. IV (16)04/AE/CGST/SH/2020

Dated:

18 MAY 2020

To,

M/s Dalmia Cement (Bharat) Limited [formerly Adhunik Cement Limited],  
Vill- Thangskai, P.O. Lumshnong,  
District East Jaintia Hills,  
Meghalaya - 793 200

Dear Sirs,

(Sub: The Fifth Interim Report on Resource (Coal) Audit of Cement Industries and Thermal Power Plants in Meghalaya)

As per Para 3.1 (Findings) of the Fifth Interim Report of the Independent Committee on Resource (Coal) Audit of Cement Industries and Thermal Power Plants in Meghalaya submitted to the Hon'ble National Green Tribunal, Principal Bench, New Delhi on 02.12.2019, the total coal required and the applicable royalty calculated in respect of your unit is as below:

Items	(metric tonnes)				Total	(Amt. in Crore Rupees) Royalty @ Rs. 675 per MT
	2015-16	2016-17	2017-18	2018-19		
Coal required*	201797	194234	222215	256324	874570	59.033

In this connection, you are requested to furnish the following:

- Details of payment made as royalty on coal (year-wise and month-wise)
- Details of Service Tax paid on Royalty on coal (year-wise and month-wise). If no Service Tax payment made, reasons thereof with supporting documents to be submitted.
- Details of GST paid on Royalty on coal (year-wise and month-wise). If no GST payment made, reasons thereof with supporting documents to be submitted.
- Details of Cess paid on coal (year-wise and month-wise). If no Cess payment made, reasons thereof with supporting documents to be submitted.

You are also requested to furnish the above details along with the amount of clinker produced (in metric tonnes) and coal procured (in metric tonnes) during the Financial Year 2019-20.

The desired information may be submitted positively by 05.06.2020.

Yours sincerely,

Jitesh Jain  
15/05/2020

(Jitesh Kumar Jain)  
Deputy Commissioner (AE) Jain  
जितेश कुमार जैन / Jitesh Kumar Jain  
उपायुक्त (अपवंचन-रोध)  
Deputy Commissioner (Anti-Evasion)  
केंद्रीय वस्तु एवं सेवा कर  
Central Goods & Service Tax  
शिलांग / Shillong

DIN - 20200570US00002WB989

2190  
ANNEXURE R-14ReminderGOVERNMENT OF MEGHALAYA  
DIRECTORATE OF MINERAL RESOURCES  
SHILLONG

No.DMR/MM/768/2018/Pt-II/Vol-IV/265

Dated Shillong, the 16.07.2020.

To,

Dalmia Cement (Bharat) Limited  
Umsoo Mootang, Thangskai  
P.O Lumshnong, East Jaintia Hills  
Meghalaya – 793210.

Sub:- Payment of Royalty, MEPRF on illegally source coal.

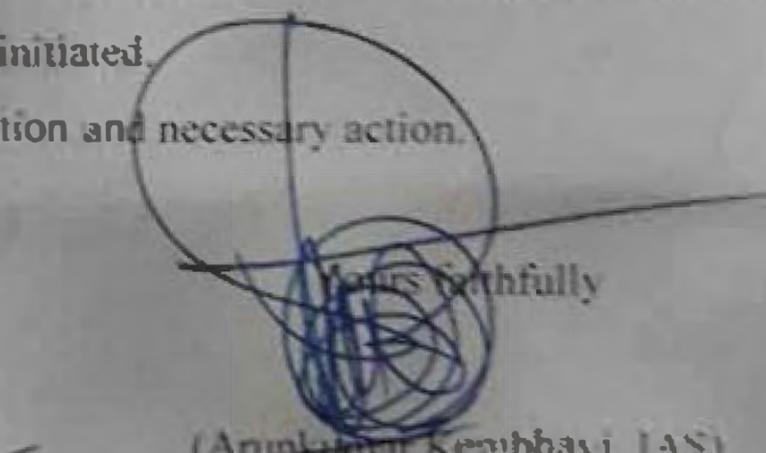
Sir/Madam,

In continuation to our earlier letter No.DMR/MM/768/2018 Pt-II/ Vol-IV/186 dt. 19.02.2020 on the subject cited above, you are directed to make the necessary payment of Royalty, MEPRF on illegally source coal within a month of issuance of this letter failing which necessary action as per law will be initiated.

Submitted for your information and necessary action.

Enclo: As above

Yours faithfully

  
(Arunkumar Kembhavi, IAS)  
Director of Mineral Resources  
Meghalaya - Shillong.

Memo.No.DMR/MM/768/2018/Pt-II/Vol-IV/265-A

Dated Shillong, the 16.07.2020.

Copy to:-

1. The Chief Secretary to the Govt. of Meghalaya, Mining & Geology Department for kind information.
2. The Member Secretary, Hon'ble NGT Committee for kind information and the Hon'ble Chairman and Hon'ble Members of the NGT Committee.
3. The Secretary to the Govt. of Meghalaya, Mining & Geology Department for kind information.

  
Director of Mineral Resources  
Meghalaya - Shillong.



ITEM NO.14

Court 5 (Video Conferencing)

SECTION XVII

2192

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL Diary No(s).16698/2021

(Arising out of impugned interim order dated 17-01-2020 in OA No.110/2012 15-03-2021 in OA No.110/2012 passed by the National Green Tribunal)

DALMIA CEMENT (BHARAT) LTD.

Petitioner(s)

VERSUS

THE STATE OF MEGHALAYA &amp; ORS.

Respondent(s)

(With applns for exemption from filing c/c of impugned judgment, ex-parte stay, Permission to file appeal)

Date : 23-08-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO  
HON'BLE MR. JUSTICE B.R. GAVAI

For Petitioner(s) Mr. Mahesh Agarwal, Adv.  
Mr. Rohan Talwar Adv.  
Mr. E. C. Agrawala, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following  
O R D E R

List along with C.A.No.3280 of 2020.

(B.Parvathi)  
Court Master

(Anand Prakash)  
Court Master

**ANNEXURE R-16**

**DALMIA CEMENT (BHARAT) LIMITED**

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**STUDY OF EXISTING SYSTEM COMPATIBILITY &  
OPTIMIZING USE OF ALTERNATIVE FUEL (AF) &  
FUEL MIX**



**February 2022**

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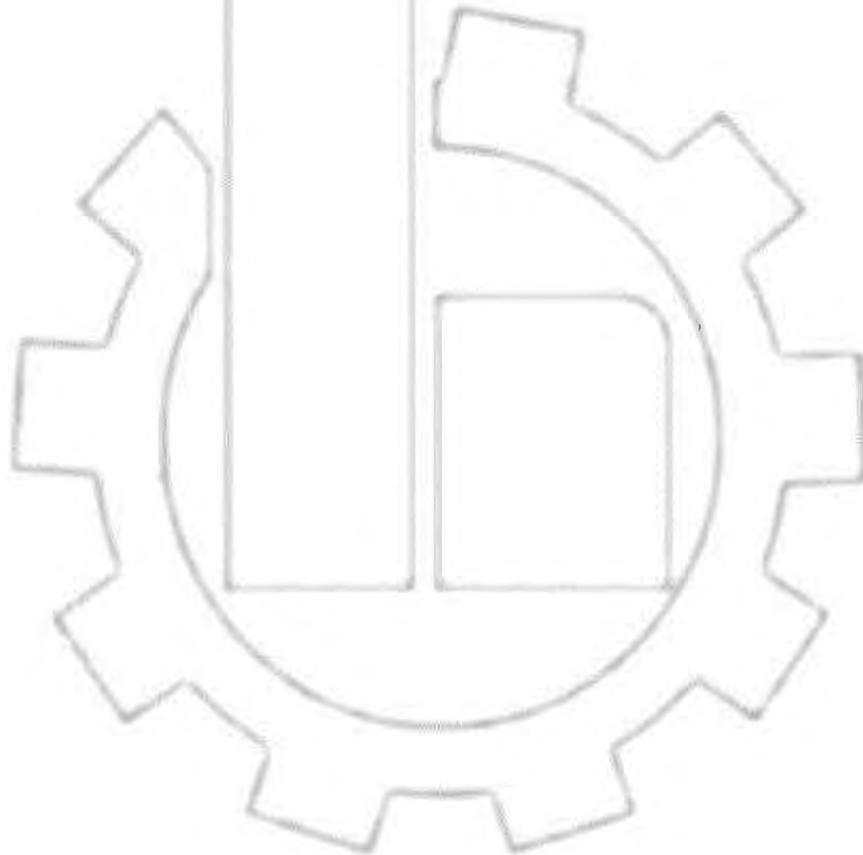
**Holtec Consulting Private Limited**

## **ACKNOWLEDGEMENT**

**WE EXPRESS OUR SINCERE GRATITUDE TO THE MANAGEMENT AND STAFF OF DALMIA CEMENT (BHARAT) LIMITED, FOR THE ASSISTANCE AND CO-OPERATION EXTENDED DURING OUR VISIT, BUT FOR WHICH THIS REPORT COULD NOT HAVE BEEN SUCCESSFULLY PREPARED.**

## TABLE OF CONTENTS

CHAPTER	DESCRIPTION	PAGES
1	PREAMBLE	1.1 - 1.2
2	STUDY OF EXISTING SYSTEM COMPATIBILITY & OPTIMIZING USE OF ALTERNATIVE FUEL & FUEL MIX	2.1- 2.23



## LIST OF DRAWINGS

CHAPTER NO.	DRAWING NO.	DESCRIPTION
2	DCBL-22.00-MISC-001	Plant Flow sheet
	YD01-11.00-GS01/09	Flow sheet for Coal Mill
	YD01-11.00-GS01/09	Flow sheet for Coal Dosing System
	YD01-07b.00-GS01/12	Flow sheet for Kiln
	HTS/ADHUNIK/PH/GA-001-3	Flow sheet for Preheater
	YD01-07C.00-GS01/07	Flow sheet for Cooler



## LIST OF ABBREVIATIONS

ABBREVIATION	DESCRIPTION
dia, $\Phi$	Diameter
m <sup>2</sup>	Square Meter
$\mu$ , mic	Micron
deg. C	Degree Celsius
a	Annum
%	Percent
t	Tonnes
AM	Alumina Modulus
AP	Action Plan
Atm	Atmosphere
Avg.	Average
BC	Belt Conveyor
C	Carbon
C <sub>2</sub> S	Di Calcium Silicate
C <sub>3</sub> S	Tri Calcium Silicate
CCR	Central Control Room
CF	Conversion Factor
Cl	Chlorine
C & I	Control & Instrumentation
CO	Carbon Mono Oxide
cm	Centi Meter
Contd.	Continued



ABBREVIATION	DESCRIPTION
GCV	Gross Calorific Value
DC	Direct Current
<b>DCBL</b>	Dalmia Cement (Bharat) Limited
DCS	Distributed Control System
dpa	Days per Annum
DPC	Deep Pan Conveyor
ECL	Eastern Coal Limited
Elec	Electrical
ESP, EP	Electro Static Precipitator
G, gm	Gram
Gcal	Giga Calories
H	Hydrogen
h, hr	Hour
hpd	Hour Per Day
<b>HOLTEC</b>	Holtec Consulting Private Limited, Gurgaon - India
HT	High Tension
HV	High Voltage
hpa	Hours per annum
hpd	Hours per day
ID	Induced Draught
HG	High Grade
IR	Insoluble Residue
kcal	Kilo Calorie

ABBREVIATION	DESCRIPTION
KF	Kiln Feed
Kg	Kilo Gram
km	Kilo Meter
kV	Kilo Volt
kVA	Kilo Volt Ampere
kW	Kilo Watt
kWh	Kilo Watt Hour
LOI	Loss On Ignition
LP	Low Pressure
LS	Limestone
LT	Low Tension
LV	Low Voltage
m	Meter
Max.	Maximum
Mkcal	Mega Kilo Calorie
Mech	Mechanical
mg	Milli Gram
M.G.H	Mass, Gas and Heat
min	Minute
Mio. mio.	Million
mm	Milli Meter
mmWG	Millimeter Water Gauge
mps	Meter Per Second

ABBREVIATION	DESCRIPTION
MV	Medium Voltage
MW	Mega Watt
Nm <sup>3</sup>	Normal cubic meter
NA	Not Applicable
NCV	Net Calorific Value
Nm <sup>3</sup>	Normal Meter Cube
No., no.	Number
O <sub>2</sub>	Oxygen
PA	Primary Air
p a	Per Annum
PC	Precalciner
pf	Power Factor
PH	Preheater
PSD	Particle Size Distribution
Q	Quality
RM	Raw Mill
Rpm/ RPM	Revolution Per Minute
S, sec	Second
S	Sulphur
Sn	Serial Number
SA	Secondary Air
SD	Standard Deviation
SLM	Straight Line Method

ABBREVIATION	DESCRIPTION
SM	Silica modulus
SO <sub>3</sub>	Sulphur Tri Oxide
Sp.	Specific
Std.	Standard
t	Tonnes
TAD	Tertiary Air Duct
Tech.	Technical
TA	Tertiary air
Temp.	Temperature
tpa	Tonnes Per Annum
tpd	Tonnes Per Day
tph	Tonnes Per Hour
V	Volt
VFD	Variable Frequency Drive
VVFD	Variable Voltage variable Frequency Drive
W	Watt
°C	Degree Centigrade
SiO <sub>2</sub>	Silicon Di-Oxide
Al <sub>2</sub> O <sub>3</sub>	Aluminium Oxide
Fe <sub>2</sub> O <sub>3</sub>	Iron Oxide / Ferric Oxide
CaO	Calcium Oxide
MgO	Magnesium Oxide
SO <sub>3</sub>	Sulphur Trioxide

ABBREVIATION	DESCRIPTION
K <sub>2</sub> O	Potassium Oxide
Na <sub>2</sub> O	Sodium Oxide



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## CHAPTER 1: PREAMBLE

### 1.1 INTRODUCTION

---

**Dalmia Cement (Bharat) Limited (DCBL)**, a large cement manufacturer in the north-east India, is having an Integrated Cement Plant located in Village Thangskai, Lumshong Khelriahat, Meghalaya.

**DCBL** has been using mixed Coal from Eastern Coal Limited (ECL), other Coal and Alternate fuels like Slate, RDF, Plastic waste, Bamboo sticks and Saw dust.

The objective of the study is to provide an independent assessment of compatibility of the existing facilities at **DCBL** plant, to partially substitute coal with Alternative fuels like Slate, RDF, Plastic waste, Bamboo Saw dust, Wooden chips and other waste materials.

The compatibility includes assessment of existing raw materials at **DCBL** cement plant for their suitability to use Alternative fuels like Slate, RDF, Plastic waste, Bamboo Saw dust, Wooden chips and other waste materials in their existing fuel mix and verification of technological suitability of existing facilities, by evaluating the need of any modification/replacement in existing systems to the usage of these Alternative Fuels for cement plant.

### 1.2 HOLTEC'S BACKGROUND

---

This Report has been prepared by:

HOLTEC Consulting Private Limited  
HOLTEC Centre,  
A Block, Sushant Lok - I  
Gurgaon – 122 001, Haryana, INDIA

Incorporated in 1967, **Holtec Consulting Private Limited (HOLTEC)** is an ISO-certified advisory, primarily positioned to service the entire gamut of multi-functional, consulting needs of the global cement industry.

**HOLTEC's** ensemble of 900+ clients, in over 90+ countries, includes cement producers, equipment & service providers, EPC & construction firms, investing & funding bodies and all other relevant stakeholders. Since its inception, **HOLTEC** has delivered significant value to its clientele through 4,500+ consulting assignments.

### 1.3 REPORT

---

**HOLTEC's** specialist team undertook a field mission to the plant site in Lumshong, Meghalaya between 23<sup>rd</sup> August and 27<sup>th</sup> August 2021.

The activities carried out during the visit included:

- Interaction with the **DCBL** plant team.
- Visit to the fuel unloading, storage & handling sections.

- Visual inspection of fuel grinding, firing & pyro-processing section of the plants.
- Monitoring current plant operation using Slate & other Alternate fuels from CCR
- Data collection

This report has been formulated based upon the data/ information provided by **DCBL**, interaction with plant operation & maintenance team during the site visit, first hand data verification & assessment and secondary research. This study draws extensively from **HOLTEC's** database on Raw Mix designs, plant designs, operating parameters etc.



## CHAPTER 2: SYSTEM COMPATIBILITY ASSESSMENT FOR USING SLATE AS AN ALTERNATIVE FUEL

### 2.1 INTRODUCTION

This chapter covers the compatibility assessment of **Dalmia Cement (Bharat) Limited**, namely **DCBL**, located at Thangskai, for usage Slate as Alternate fuel. Presently major portion of Alternate fuels are RDF, Plastic waste, Bamboo sticks and Saw dust. Slate is an overburden of coal mines, locally available to the cement plants in Meghalaya, for use as an alternative fuel. It has low Net Calorific Value of ~ 1,959 kcal/ kg (GCV: 2,095 kcal/ kg fuel) and high Ash percentage (~61.27%), as compared to traditional fuel (Coal). However, it is having almost similar physiochemical properties as that of coal. Whereas other Alternative fuels' availability is not consistent so their usage is as per their availability.

The compatibility is assessed based on the following:

- Establishing the suitability of existing raw materials and coal to manufacture the desired quality of clinker/ cement with usage of alternative fuels. **HOLTEC**'s proprietary Raw Mix Design Software, is used to cross-verify the current operating raw mix and establishing the most optimum raw mix.

The raw mix suitability analysis is carried at **HOLTEC** facility, based on the quality test results of input materials, provided by **DCBL** Laboratory at site.

- Establishing the compatibility of existing systems with Alternate fuels usage and identify the requirement of any modification/ addition in the system to make it suitable.

**DCBL** is currently consuming mixed Coal from Eastern Coal Limited (ECL) and other Coal and minor Alternative Fuels.

A field mission was carried out by a two member specialist team from **HOLTEC** to go through the plant operation and for walk through visual inspection of available facility at site.

The following sections cover methodology adopted for the study and area wise assessment of plant operations.

### 2.2 METHODOLOGY

Following methodology was adopted for formulation of the report.

- Interaction with the team to apprehend plant operation using alternative fuels.
- Review of operating raw mix with alternative fuels.
- Review of plant operations with respect to technological need.

## 2.3 RAW MATERIAL SUITABILITY

To assess the raw material suitability the operating raw mix is cross-verified with **HOLTEC**'s proprietary Raw Mix Design Software. Analysis were carried out for both the fuel mix with the following trials

**Trail 1:** 70% Coal (ECL-47% & Other Coal-23%) with 25% Slate along with 5% minor Other Alternative Fuels (Saw Dust & RDF)

**Trail 2:** 45% Coal (ECL-31% & Other Coal-14%) with 50% Slate along with 5% minor Other Alternative Fuels (Saw Dust & RDF)

### 2.3.1 Raw Materials & Fuel

#### Raw Materials

**DCBL** is using 5 components as raw material to make the raw mix for clinker production. The chemical compositions of used materials viz. Limestone, Brisnot & Red Clay, Laterite, Sand & CPP bed ash were collected during the site visit and the same is tabulated below:

Component Name	LOI	SiO <sub>2</sub>	Al <sub>2</sub> O <sub>3</sub>	Fe <sub>2</sub> O <sub>3</sub>	CaO	MgO	K <sub>2</sub> O	Na <sub>2</sub> O	SO <sub>3</sub>	Ti <sub>2</sub> O
Limestone	38.1	7.5	1.4	2.06	44.2	4.2	0.04	0.10	1.6	0.0
Brisnot & Red Clay	8.5	58.9	14.5	11.7	2.48	1.0	1.83	0.10	0.4	0.0
Laterite	6.9	51.9	6.82	30.5	0.75	0.2	0.81	0.15	0.2	1.12
Sand	2.9	87.1	5.66	0.56	2.15	0.13	0.01	0.11	0.04	0.0
CPP Bed Ash	5.2	56.6	20.7	10.3	3.24	0.42	0.52	0.01	1.62	0.0

#### Fuel

**DCBL** is using coal (ECL & Other Coal) as fuel mix and currently alternative fuels with RDF & Saw Dust. Their analysis is as indicated below:

#### Ultimate Analysis

Fuel	Hydrogen (%)	Carbon (%)	Nitrogen (%)	Sulphur (%)	Oxygen (%)	Ash Content (%)
Coal (ECL)	3.8	60.3	1.3	0.5	4.83	25
Other Coal	4.5	60.8	0.58	5.9	0.42	26

Fuel	Hydrogen (%)	Carbon (%)	Nitrogen (%)	Sulphur (%)	Oxygen (%)	Ash Content (%)
Saw Dust	5.2	43.19	0.01	0.03	32.9	30
Bamboo Sticks	6.8	47.98	0.02	0.01	37.7	3.62
Firewood	6.6	48.68	0.01	0.01	37.48	1.00

**Chemical Analysis of Fuel Ash**

Component Name	SiO <sub>2</sub>	Al <sub>2</sub> O <sub>3</sub>	Fe <sub>2</sub> O <sub>3</sub>	CaO	MgO	K <sub>2</sub> O	Na <sub>2</sub> O	SO <sub>3</sub>	Cl
Coal (ECL)	58.96	26.7	6.2	4.8	1.6	0.15	0.10	0.22	0.020
Other Coal	52.64	26.8	16.2	0.84	0.7	0.10	0.07	1.50	0.017
Slate	60.53	22.25	9.25	1.28	0.45	0.80	0.20	2.20	-
Saw Dust	70.26	15.1	6.56	4.53	0.31	0.10	0.06	2.2	0.033
Firewood	26.78	22.5	7.67	32.2	3.91	-	-	6.7	0.015
Bamboo	62.90	8.72	2.93	11.33	3.26	-	-	6.9	0.001

**Proximate Analysis**

Fuel	Inherent Moisture (%)	Total Moisture (%)	Volatile Matter (%)	NCV (kcal/ kg)
Other Coal	1.56	14.00	34.50	5,300
Coal (ECL)	1.70	14.00	30.41	5,500
Slate	0.45	5.49	19.34	1,959*
Saw Dust	4.63	48.00	70.69	2,900
Bamboo	4.42	39.00	78.02	3,106
Firewood	4.67	16.00	79.72	2,980
Plastic Waste	NA	9.00	NA	3,372
RDF	NA	15.00	NA	2,837

\*Arrived from GCV

### Raw Mix

DCBL has modified the Raw Mix proportions while using Slate and Other Alternative Fuels to compensate the additional silica input from high % ash of Slate. Higher proportion of Limestone is being used by reducing the Clay percentage.

The raw mix proportion being operated by the plant is given below:

Raw Mix Proportions				
Sn	Components	Existing: 97 % Mix Coal, 3 % Other Alternate fuels	Trail-1: 70 % Mix Coal, 25 % Slate, 5 % Other Alternate fuels	Trail-2: 45 % Mix Coal, 50 % Slate, 5 % Other Alternate fuels
1	Limestone	92.2	92.6	93.3
2	Brisnot & Red Clay	4.0	5.0	4.0
3	Laterite	1.3	0.5	0.7
4	Sand	1.3	0.9	1.3
5	CPP Bed Ash	1.2	1.0	0.7

The clinker quality assessment has been performed based on the above mix.

### Clinker conversion factor

Based on the operating raw mix design, the average raw material to clinker conversion as well as kiln feed to clinker factors are furnished below:

Detail	DCBL
Raw Meal to Clinker factor*	1.52
Kiln Feed to Clinker factor *	1.62

\*As reported by DCBL

### Clinker Analysis

Based on the above quality analysis the resultant clinker quality is cross-verified using HOLTEC's Raw Mix Design software. Chemical composition along with clinker moduli values are analyzed compared and has been summarized below:

Clinker composition with Fuel Mix – Without Slate											
97 % Coal, 3 % Other Alternate fuels											
Composition %	Free CaO	SiO <sub>2</sub>	Al <sub>2</sub> O <sub>3</sub>	Fe <sub>2</sub> O <sub>3</sub>	CaO	MgO	K <sub>2</sub> O	Na <sub>2</sub> O	SO <sub>3</sub>	Ti <sub>2</sub> O	Liquid
DCBL analysis	2.02	20.37	4.59	4.47	60.92	5.39	0.46	0.1	2.51	0.00	28.66
HOLTEC assessment	2.00	20.47	4.58	4.45	60.84	5.42	0.46	0.1	2.51	0.00	29.48

Clinker Phases & Moduli are as follow:

Source	Clinker Phases				Moduli		
	C <sub>3</sub> S	C <sub>2</sub> S	C <sub>3</sub> A	C <sub>4</sub> AF	AM	SM	LSF
DCBL analysis	41.96	26.84	4.6	13.59	1.02	2.25	0.9
HOLTEC assessment	41.12	27.67	4.6	13.55	1.03	2.27	0.9

Trial-01:

Clinker composition with Fuel Mix – With 25% Slate (Operating)											
70 % Coal, 25% Slate, 5 % Other Alternate fuels											
Composition %	Free CaO	SiO <sub>2</sub>	Al <sub>2</sub> O <sub>3</sub>	Fe <sub>2</sub> O <sub>3</sub>	CaO	MgO	K <sub>2</sub> O	Na <sub>2</sub> O	SO <sub>3</sub>	Ti <sub>2</sub> O	Liquid
DCBL analysis	1.71	20.41	4.64	4.49	60.67	5.49	0.45	0.10	2.37	0.40	28.69
HOLTEC assessment	1.55	20.41	4.64	4.49	60.67	5.48	0.44	0.10	2.39	0.35	29.78

Clinker Phases & Moduli are as follow:

Source	Clinker Phases				Moduli		
	C <sub>3</sub> S	C <sub>2</sub> S	C <sub>3</sub> A	C <sub>4</sub> AF	AM	SM	LSF
DCBL analysis	42.18	26.77	4.83	13.40	1.05	2.25	0.90
HOLTEC assessment	42.52	26.43	4.70	13.67	1.03	2.23	0.91

Further, the maximum possible usage of Slate has been assessed, maintaining the existing clinker quality, using **HOLTEC's** Raw Mix Design software and the resultant Chemical composition along with clinker moduli values are summarized below:

Trail-02:

Clinker composition with Fuel mix – With 50% Slate (Operating) (45% Coal, 50% Slate, 5% Other Alternative Fuels)											
Composition %	Free CaO	SiO <sub>2</sub>	Al <sub>2</sub> O <sub>3</sub>	Fe <sub>2</sub> O <sub>3</sub>	CaO	MgO	K <sub>2</sub> O	Na <sub>2</sub> O	SO <sub>3</sub>	Ti <sub>2</sub> O	Liquid
DCBL analysis	1.55	20.41	4.68	4.41	60.61	5.49	0.45	0.10	2.61	0.39	28.89
HOLTEC assessment	1.55	20.41	4.68	4.41	60.61	5.49	0.45	0.10	2.63	0.46	29.75

Clinker Phases & Moduli are as follow:

Source	Clinker Phases				Moduli		
	C <sub>3</sub> S	C <sub>2</sub> S	C <sub>3</sub> A	C <sub>4</sub> AF	AM	SM	LSF
DCBL analysis	41.53	27.27	4.94	13.41	1.06	2.24	0.90
HOLTEC assessment	41.44	27.26	4.94	13.42	1.06	2.25	0.90

HOLTEC's Observations on Process and Quality (Trial 1 & 2):

Process:

- ✓ There is an increase in Coal consumption by ~1.0 to 2.5 tons with Slate 25 % and 50 % trials.

- ✓ System is running with CO with and without Slate due to unstable flow of AFR tonnage during the trial. This could be due to stabilization of new AFR system under commissioning.
- ✓ Limestone consumption increased by 0.4 and 1.1 % respectively with Slate 25 % and 50 % trial, as expected.
- ✓ Further increase of Slate usage may not be feasible due to the limitations of PH fan margin & Calciner Fuel firing capacity.

**Quality:**

- ✓ The analysis of produced clinker, as per **DCBL** laboratory, is observed to be aligned with the results obtained from **HOLTEC's Raw Mix Design Software** for the following Fuel mixes:
  1. Fuel mix of 70% Coal, 25% Slate and 5% other Alternative Fuels
  2. Fuel mix of 45% Coal, 50% Slate and 5% other Alternative Fuels
- ✓ The minor variations observed in clinker phases pertain to the actual burning and quenching conditions during the clinkering process and are very common as per **HOLTEC's** experience.

**Proposed Alternate Raw Mix for improved clinker quality:**

Furthermore, an alternate Raw Mix using Slate (25% & 50%), with improved clinker quality has been worked out in the following section.

The resultant Chemical composition with the proposed alternate mix, along with clinker moduli values with the improved clinker quality, using **HOLTEC's** Raw Mix Design software are summarized below:

<b>Proposed Raw Mix Proportions with Slate Usage (25% &amp; 50%)</b>			
<b>Sn</b>	<b>Components</b>	<b>70 % Coal, 25 % Slate, 5 % Other Alternate fuels</b>	<b>45 % Coal, 50 % Slate, 5 % Other Alternate fuels</b>
1	Limestone	93.11	93.95
2	Brisnot & Red Clay	4.75	3.51
3	Laterite	0.0	0.0
4	Sand	2.14	2.54
5	CPP Bed Ash	0.0	0.0

Resultant Clinker composition with Fuel Mix – With 25% Slate (Proposed)											
70 % Coal, 25% Slate, 5 % Other Alternate fuels											
Composition %	Free CaO	SiO <sub>2</sub>	Al <sub>2</sub> O <sub>3</sub>	Fe <sub>2</sub> O <sub>3</sub>	CaO	MgO	K <sub>2</sub> O	Na <sub>2</sub> O	SO <sub>3</sub>	Ti <sub>2</sub> O	Liquid
HOLTEC assessment	1.5	20.67	4.35	4.09	61.11	5.52	0.40	0.10	2.38	0.0	30.4

Clinker Phases & Moduli are as follow:

Source	Clinker Phases				Moduli		
	C <sub>3</sub> S	C <sub>2</sub> S	C <sub>3</sub> A	C <sub>4</sub> AF	AM	SM	LSF
HOLTEC assessment	45.0	25.32	4.60	12.45	1.06	2.45	0.91

Clinker composition with Fuel mix – With 50% Slate (Proposed)											
(45% Coal, 50% Slate, 5% Other Alternative Fuels)											
Composition %	Free CaO	SiO <sub>2</sub>	Al <sub>2</sub> O <sub>3</sub>	Fe <sub>2</sub> O <sub>3</sub>	CaO	MgO	K <sub>2</sub> O	Na <sub>2</sub> O	SO <sub>3</sub>	Ti <sub>2</sub> O	Liquid
HOLTEC assessment	1.5	20.57	4.44	3.96	61.2	5.53	0.4	0.1	2.63	0.0	30.65

Clinker Phases & Moduli are as follow:

Source	Clinker Phases				Moduli		
	C <sub>3</sub> S	C <sub>2</sub> S	C <sub>3</sub> A	C <sub>4</sub> AF	AM	SM	LSF
HOLTEC assessment	45.00	25.02	5.06	12.04	1.12	2.45	0.91

The analysis of expected quality of clinker (improved) with a fuel mix of (70% Coal + 25% Slate + 5% Other Alternative Fuels) and (45% Coal + 50% Slate + 5% Other Alternative Fuels) using the HOLTEC's Raw Mix Design Software has also been assessed with alterations in the Raw mix proportion as shown above.

- ✓ The raw mix works out to be normal burning with higher Liquid content for the proposed mix. The kiln operation needs to be closely monitored with the proposed mix as critical parameters like liquid content and MgO are on higher side.
- ✓ **The clinker produced using the above raw mix & fuel mix with Slate (25% & 50%) is suitable for cement production as per the applicable standards.**

## 2.4 PROCESS TECHNOLOGY

This section provides details of major equipment and machinery installed at **Dalmia Cement (Bharat) Limited** at Village Thangskai Lumshnong, Khelriahat, Meghalaya to meet the technological requirement with respect to usage of alternative fuels.

The list of major equipment installed in the plant, is shared below:

### 2.4.1 Dalmia Cement (Bharat) Limited (DCBL)

Sn	Equipment (MCL)	Qty	Capacity
1	Coal Crusher	1	150 tph
2	Coal Stacker	-	NA
3	Coal Reclaimer	-	NA
4	Coal Mill (VRM)	1	25 tph at 12.5% R 90 micron
5	Kiln, 4.0 m inner dia x 60 m length Max speed 5.8 rpm, Inclination 3.6 <sup>0</sup>	1	2,500 tpd (Design), 3,300 tpd (Operating)
6	Kiln Burner (Pyrojet)	1	10 tph
7	Calciner Burner	1	20 tph
8	Preheater - ILC (5 Stage, Single string)	1	2,500 tpd (Design) 3,300 tpd (Operating)
9	Grate Cooler Active Grate - Area 61.2 m <sup>2</sup>	1	2,500 tpd (Design) 3,300 tpd (Operating)

Table: Plant Equipment Specification (DCBL)

### HOLTEC's Observation:

- ✓ The type of technology used by DCBL to meet fuel handling, storage, grinding & firing requirement are suitable for coal & slate.

## 2.5 SYSTEM COMPATIBILITY FOR HANDLING AND USAGE OF ALTERNATE FUEL

As observed in section 2.4 above, suitable technology is available for using Slate as Alternate fuel at **DCBL**. The facilities and equipment used for Coal are also used suitably for Slate.

This section covers the assessment of system compatibility of the existing facilities and equipment used by **DCBL** as observed & demonstrated during site visit.

### 2.5.1 Fuel unloading & handling

ECL Coal, Other Coal and Slate are brought to site by trucks and are unloaded in dedicated open yard.

Coal (ECL & Other), holding the major portion among the fuel mix are mixed in desired proportion in storage sheds by front loader. The mixed materials are fed to the discharge hopper with loader arrangement and fed directly to the mill. The plant is not equipped with mechanized stacking and reclaiming arrangement for homogeneous mixing.

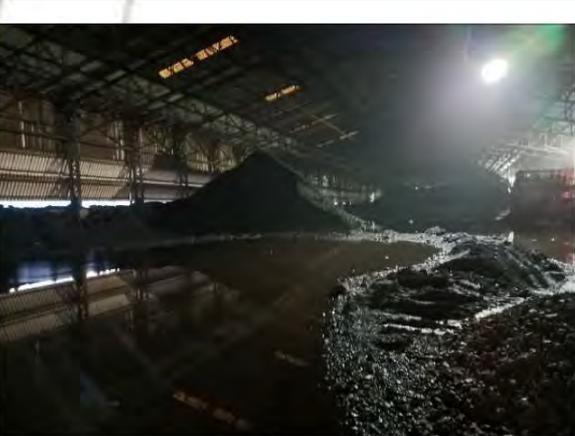
Alternate fuels like Plastic waste, RDF, Bamboo sticks and Saw dust are kept separately in different sheds and shredded using the shredder before finally fed for firing in system. **DCBL** has suitable feeding arrangement upto 25 tph for RDF & plastic waste. Shredded material is directly dumped into a discharge hopper by loader and fed to the calciner through conveying system.

Slate is observed to have more of stones (or less of carbonaceous material) as compared to Coal, which is quite evident for it being an overburden/interburden of coal mines.

Photo plates showing the arrangement and activities in progress, taken during the site visit, are as follow:



Slate covered storage in open yard



Slate & Other Coal stored in Covered shed before Mixing



Slate & Coal Mixing by Loader at Site for trail

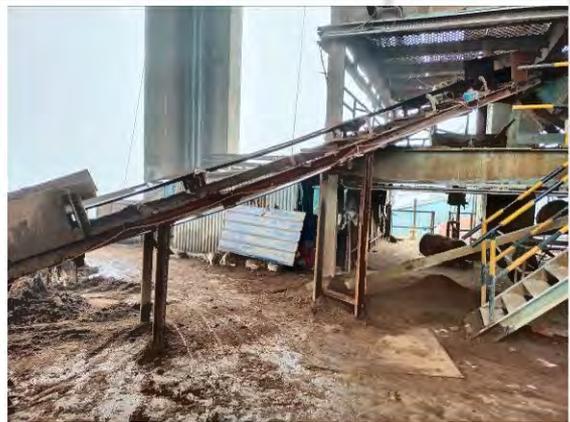
<p>Mixed Coal pile prepared at site with Slate &amp; Coal</p>	
<p>RDF storage in Open yard</p>	
<p>Saw Dust Storage at yard</p>	<p>Bamboo Storage in Open yard</p>



**Unloading & Feeding to Shredder for Alternate Fuel (RDF)**



Shredded RDF & Discharge Hopper Feeding to Preheater



Manual Feeding of Saw dust at Kiln Riser

Saw Dust feeding System to Coal Mill

**2.5.2 Fuel Stacking & Reclaiming**

The unloaded material (Coal & Slate) is transported to dump hopper in the storage yard through tippler and fuel mix is done through loader as per the Quality requirement.

	
<p><b>Coal Crusher Dump Hopper</b></p>	<p><b>Coal Crusher (Running in Bypass Mode)</b></p>
	
<p><b>Mixed Pile formation Using Loader (Coal+Slate)</b></p>	<p><b>Other Coal at Site</b></p>



**Eastern Coal (ECL) Yard Storage**

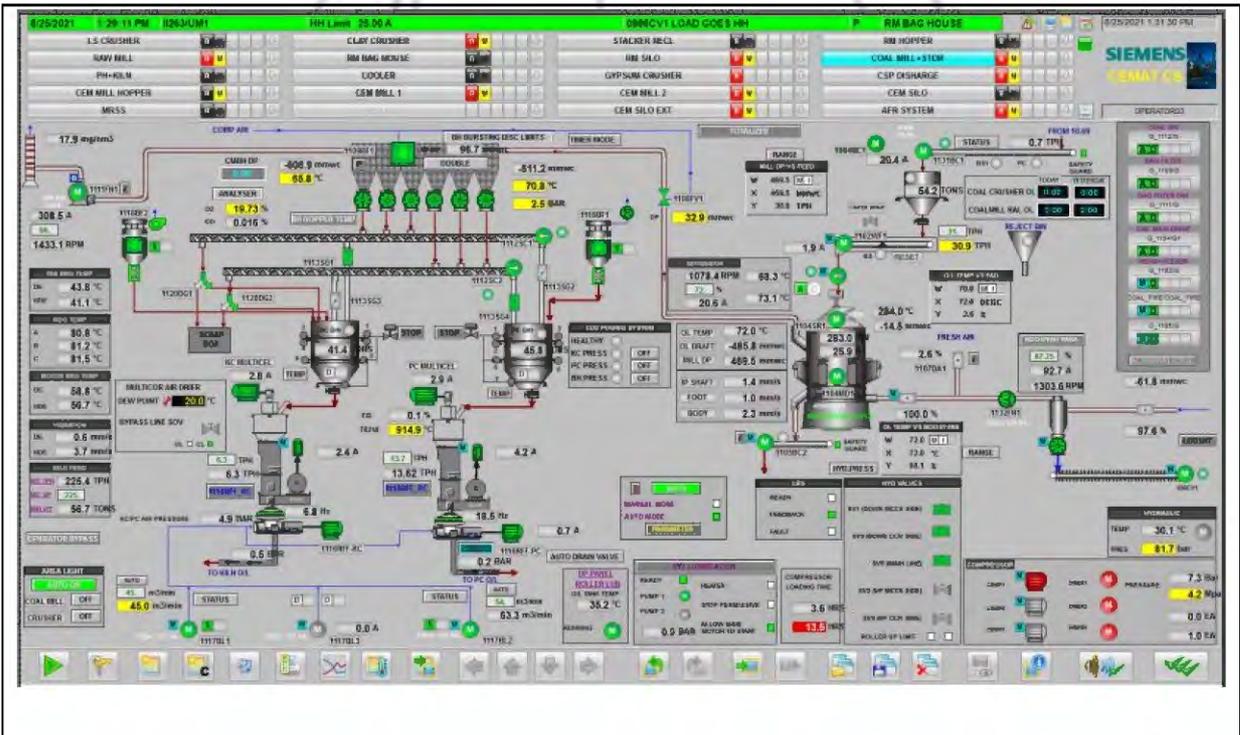
### **2.5.3 Grinding & Conveying**

All the fuel mix is transferred to Raw Coal hopper. From the hoppers the fuel is extracted for the grinding in Vertical Mill. Product will be collected in fine coal bins and then fed to kiln and calciner firing.



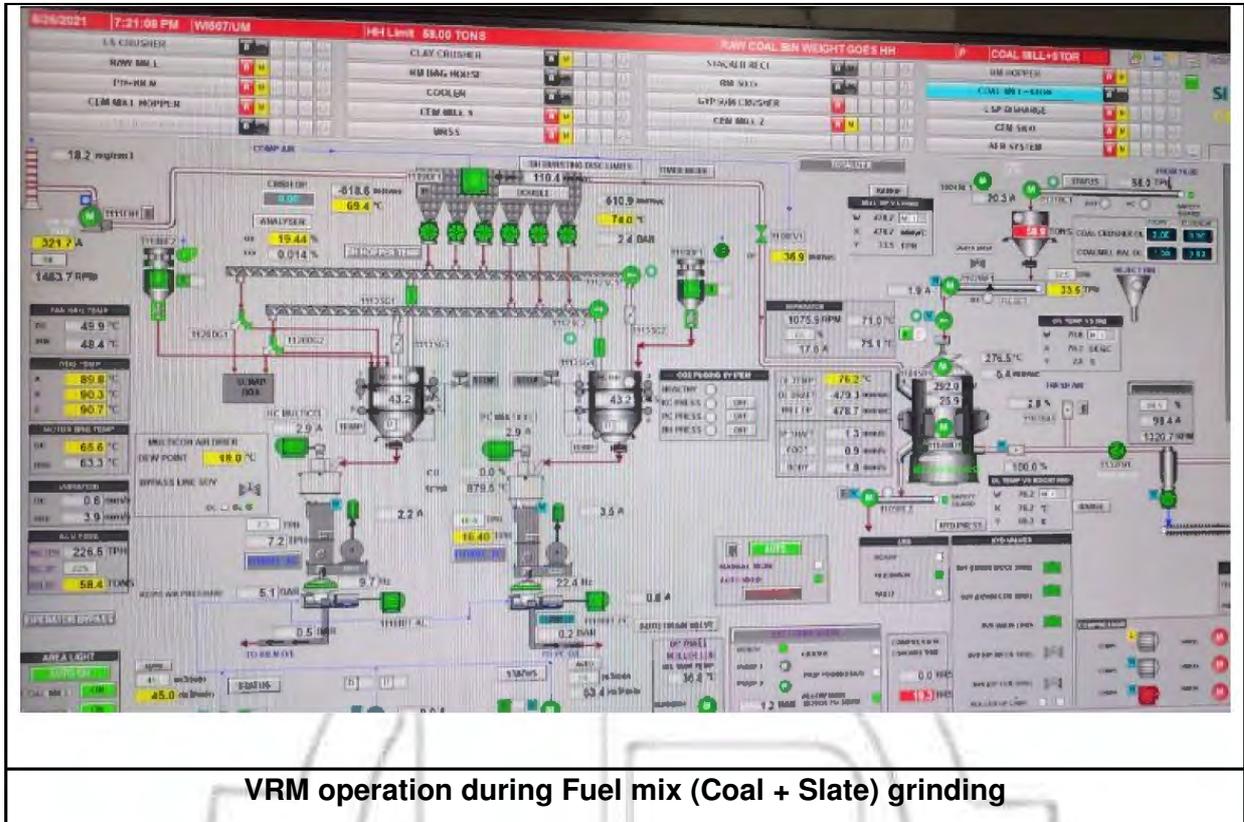
Fuel grinding mill (VRM)

The CCR mimic while grinding (Coal: 70%+ Slate:25%):



VRM operation during Fuel mix (Coal + Slate) grinding

The CCR mimic while grinding (Coal: 45 %+ Slate:50%):



### HOLTEC's Observation

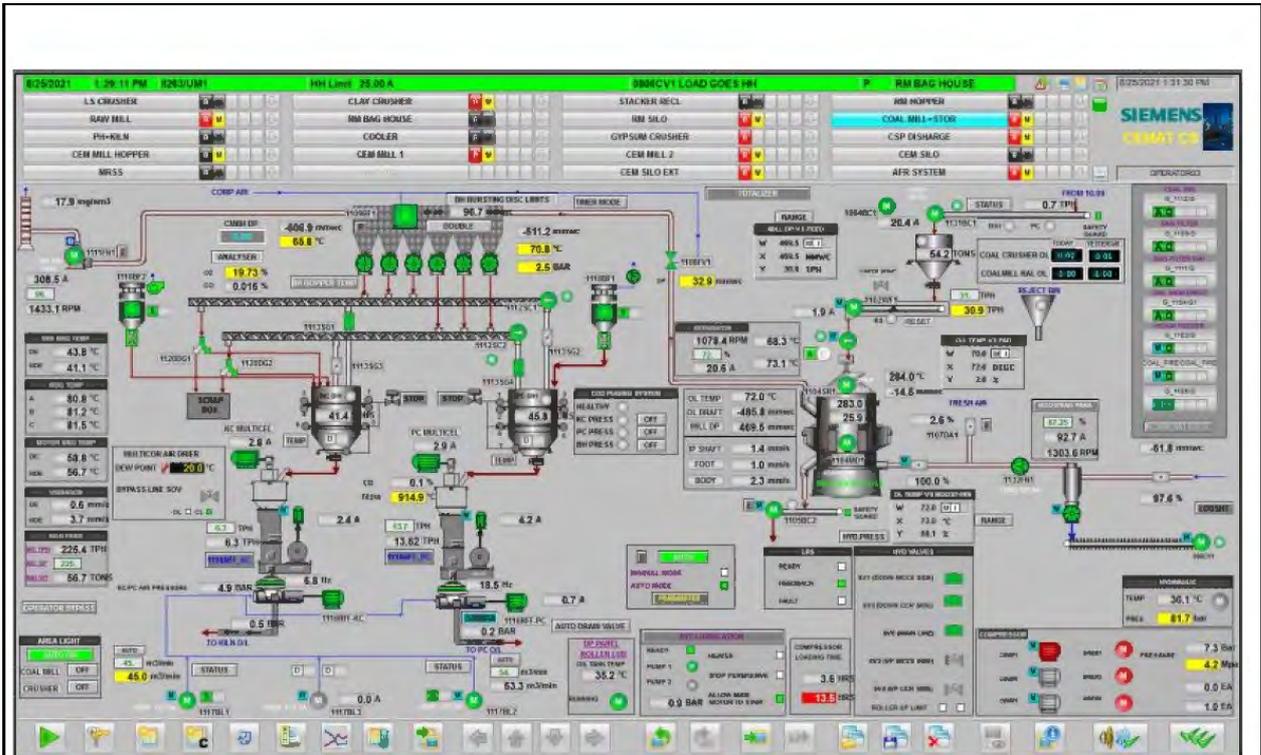
- ✓ There is no abnormalities observed with respect to operation while grinding with Slate (25 % & 50 % in the fuel mix) during **Holtec's** presence.

### 2.5.4 Fine Coal & Other AF conveying

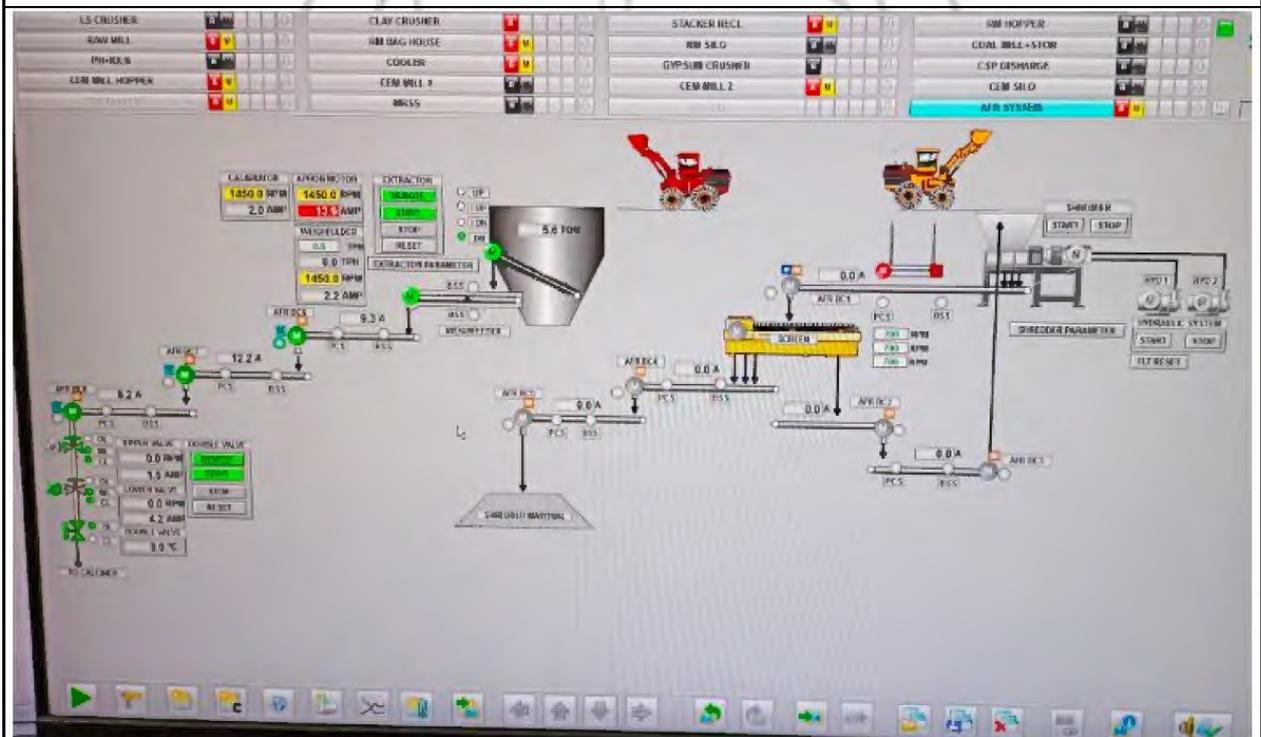
Fuel mix are extracted to Kiln and Calciner firing as per requirement in continuous operation of Kiln. The extraction and fine coal conveying systems are with separate solid flow meter & FK pumps for both kiln and calciner along with the provision of a common stand by for both the requirement.

The other alternate fuels like RDF & plastic waste are being transported through a mechanized system and fed to the level of pre-calciner, and saw dust are being transported to the PH tower through service lift and fed to kiln riser manually using belt conveyor.

The CCR mimics for the fine coal transport system using the fuel mix (Coal + Slate) and shredded RDF in operation is as below:



Fine Coal weighing & dosing system to Kiln and Calciner firing



Shredded RDF transport system to Calciner during Operation

**2.5.5 Fuel firing in Kiln**

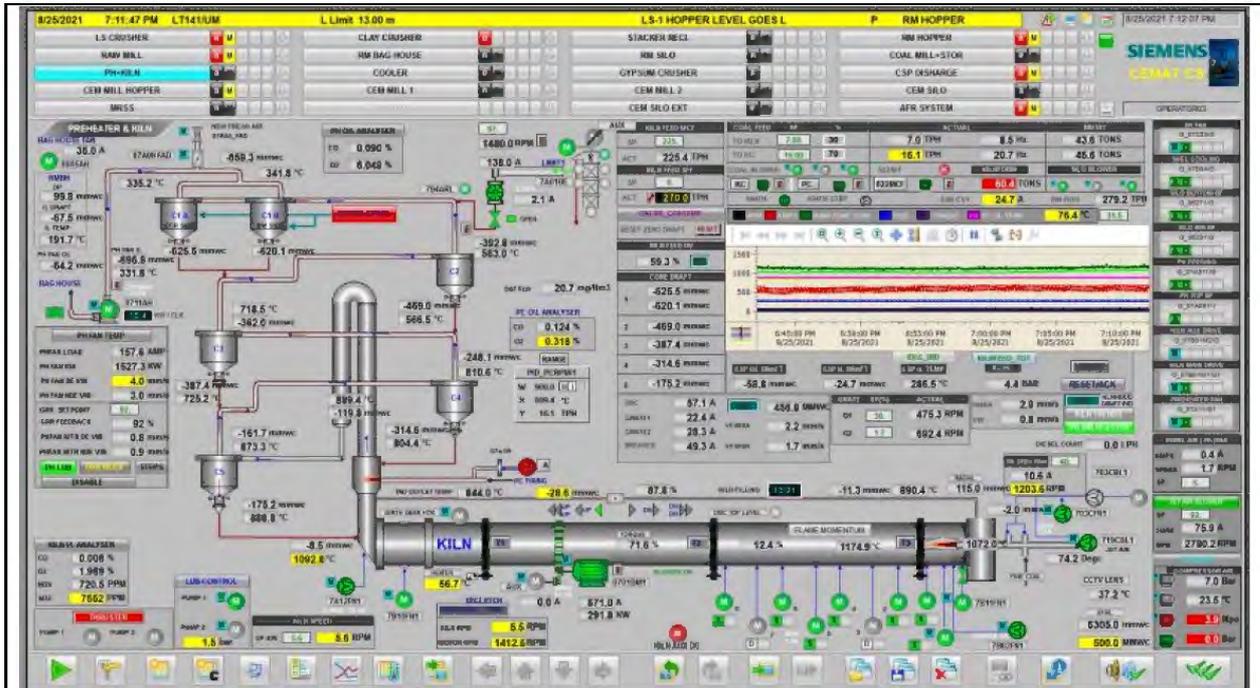
Fine fuel mix is fired using the latest technology burner. It has been provided with separate Jet air and Swirl air blowers for the formation of required flame length and width with proper mixing of fuel & primary air.



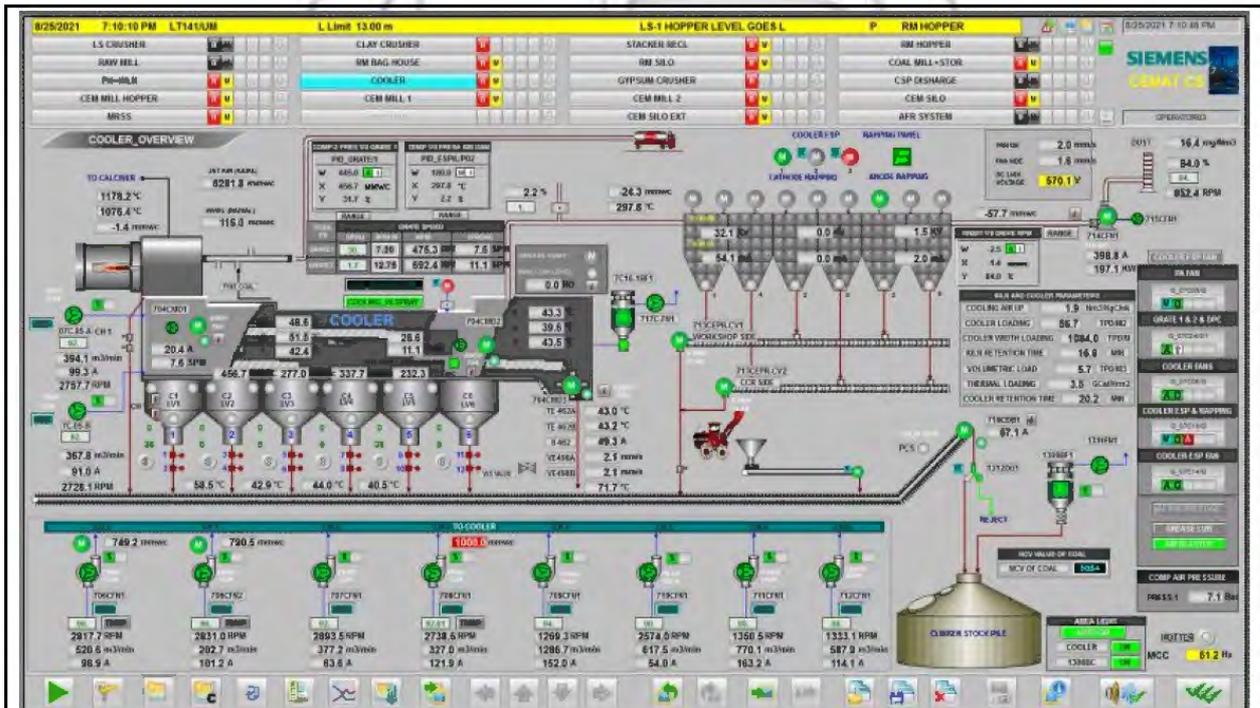
**Kiln Burner**



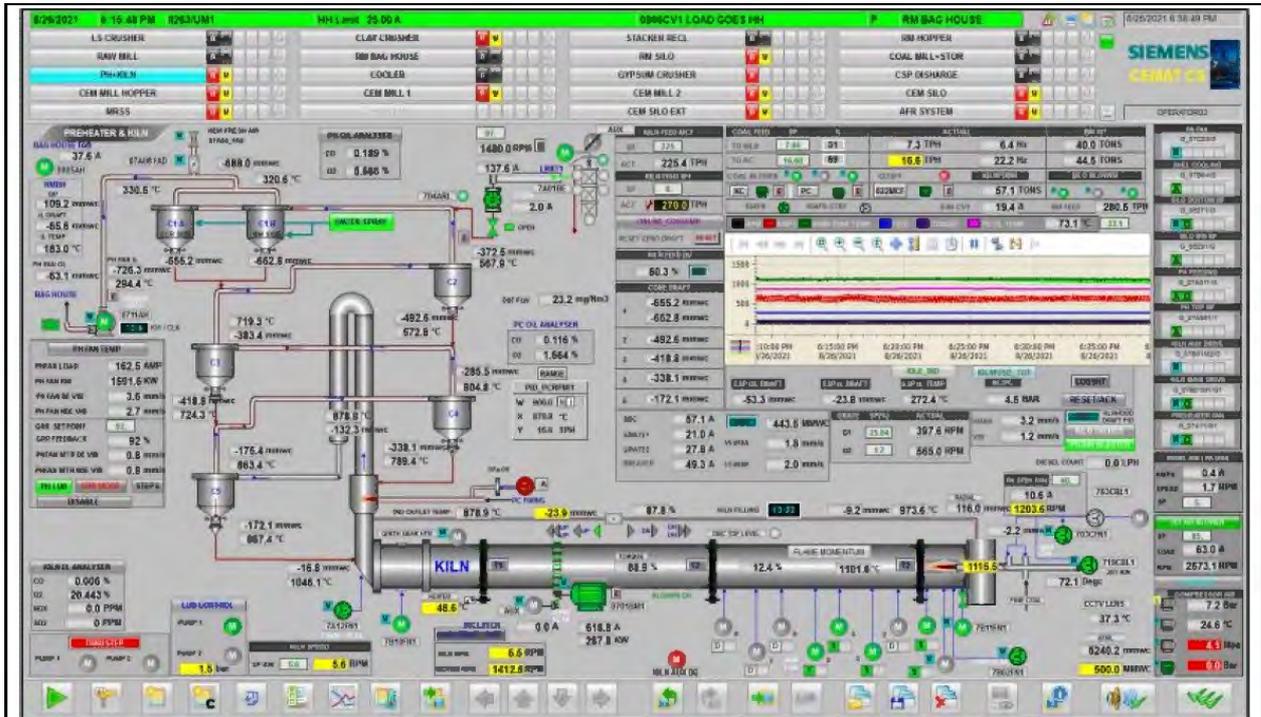
**Kiln burner with coal entry pipe**



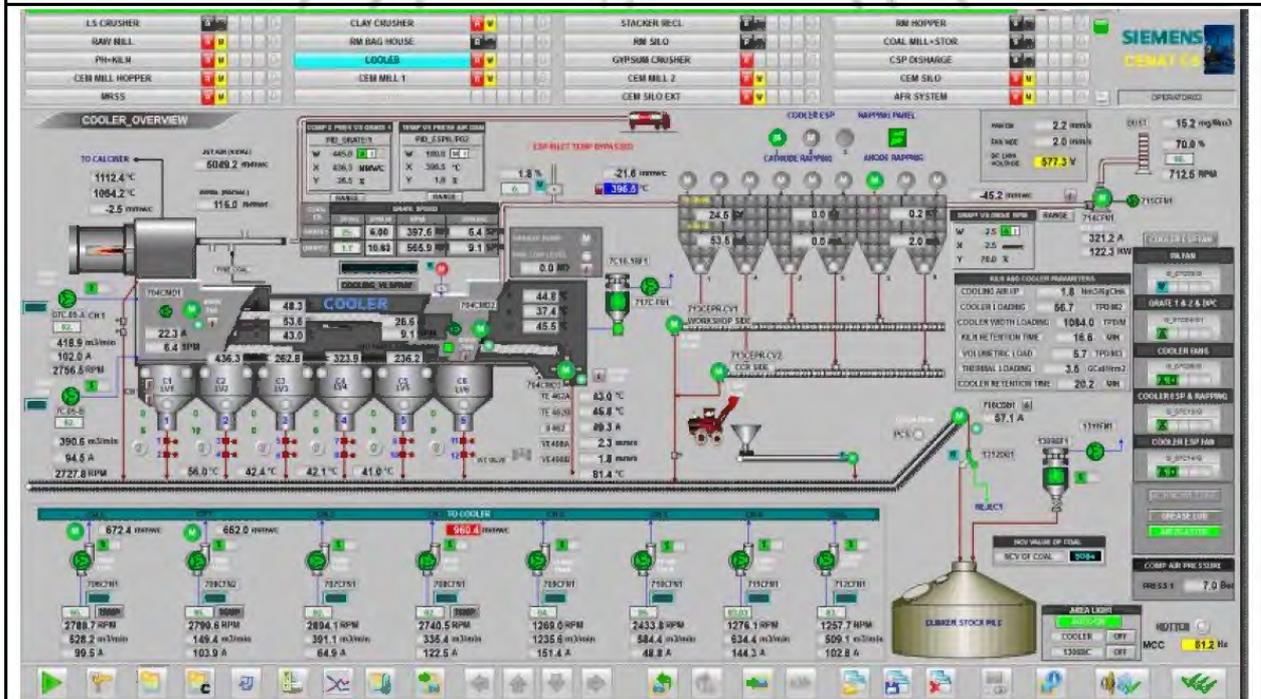
The CCR mimic of Kiln operation with fuel mix (Coal: 70%+ Slate: 25%):



Clinker cooler in operation



Kiln in operation with Fuel mix (Coal: 45%+ Slate: 50%) in operation



Clinker cooler in operation

## 2.6 FLOW SHEET & LAYOUT

The plant layout & Fuel handling, grinding and conveying flow sheets for **DCBL**, is attached as following drawing no. for reference.

- Plant Flowsheet : DCBL-22.00-MISC-001
- Flowsheet for Coal Mill : YD01-11.00-GS01/09
- Flowsheet for Coal Dosing System : YD01-11.00-GS01/09
- Flowsheet for Kiln : YD01-07b.00-GS01/12
- Flowsheet for Preheater : HTS/ADHUNIK/PH/GA-001-3
- Flowsheet for Cooler : YD01-07C.00-GS01/07

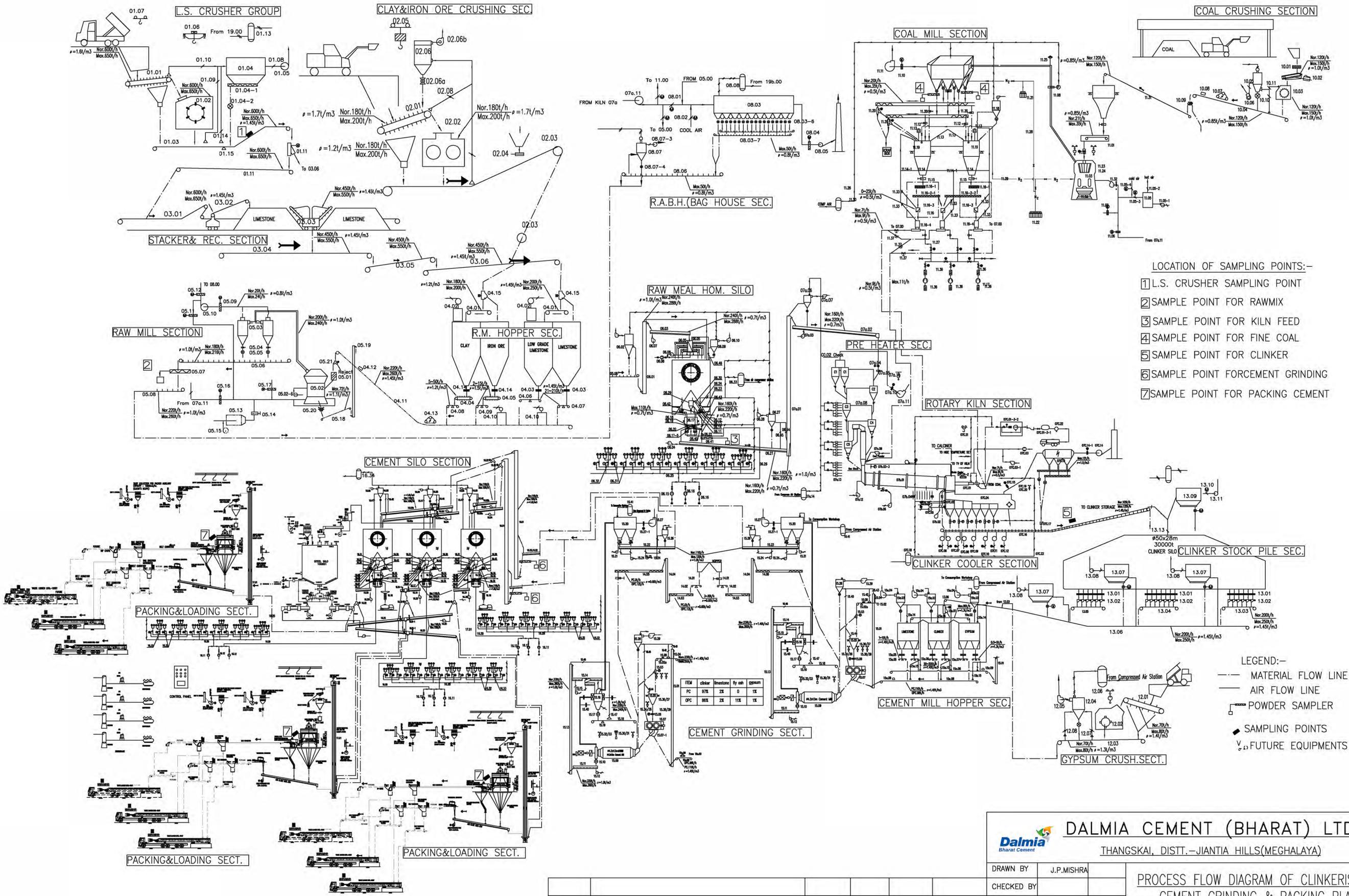
## 2.7 CONCLUSION

From the above followings can be concluded:

- ✓ Introduction of **Slate** as alternative fuel has generated the additional volume handling requirement, due to reduced calorific value and high Ash content.
- ✓ It is observed that **DCBL** has adequate facilities for handling, storage and processing of Slate and other alternative fuels (RDF, Plastic Waste, Saw Dust and Bamboo sticks ) at their cement manufacturing plant.
- ✓ Low heat value and high ash percentage of Slate, would require/ stipulate the enhanced consumption of limestone in Raw mix vis-à-vis with that of Coal. This calls for modification in raw mix design. However, based on the assessment carried out by **HOLTEC**, it can be concluded that, for the usage of Slate replacing coal up to ~50 % (wt.%) in fuel mix to maintain quality of product, **DCBL** has to go for necessary changes in Raw mix design and ensure that the quality of clinker produced are as per applicable standards. The proposed raw mix has been verified to be suitable to meet the product requirement
- ✓ The Kiln operation with fuel mix 45% Coal + 55% Alternative fuels (50 % Slate + 5% Other AF) has been witnessed, which found to be generally operating normally.

**The assessment concludes that, using Slate as Alternative fuel in a state of the art coal based clinkerisation facility does not demand any major changes in plant process and modification/ addition of new equipment, if adequate design margins are available in the fuel unloading, storage, grinding, dozing and firing systems.**

**Cement manufacturing facilities at DCBL are suitably equipped to operate with up to 50%, Slate as Alternative fuel in their fuel mix, with suitable change in raw mix design, within the existing system, without any need of alteration/ addition of their existing equipment & facilities.**



LOCATION OF SAMPLING POINTS:-

- L.S. CRUSHER SAMPLING POINT
- SAMPLE POINT FOR RAWMIX
- SAMPLE POINT FOR KILN FEED
- SAMPLE POINT FOR FINE COAL
- SAMPLE POINT FOR CLINKER
- SAMPLE POINT FORCEMENT GRINDING
- SAMPLE POINT FOR PACKING CEMENT

**DALMIA CEMENT (BHARAT) LTD.**  
 THANGSKAI, DISTT.-JIANTIA HILLS(MEGHALAYA)

DRAWN BY J.P.MISHRA  
 CHECKED BY  
 APPROVED BY

DATE 30-08-09  
 SCALE N.T.S.

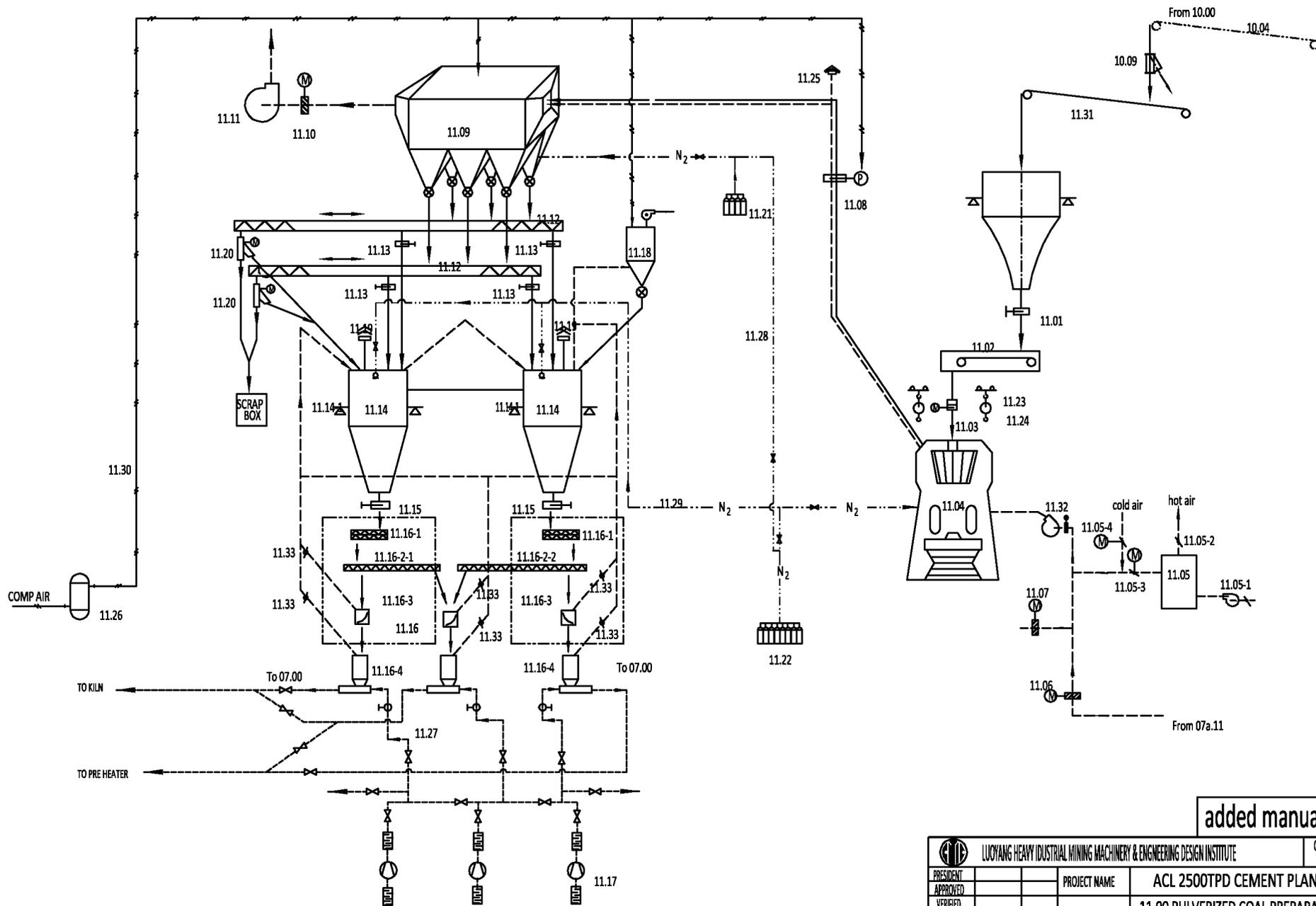
PROCESS FLOW DIAGRAM OF CLINKERISATION,  
 CEMENT GRINDING & PACKING PLANT

DRG. NO.- DCBL- 22.00-MISC-001  
 SHEET SIZE A-0  
 REV. 0

REV. NO.	DESCRIPTION	BY	CHD. BY	APPD. BY	DATE
REVISIONS					

2020  
FLOW SHEET

361

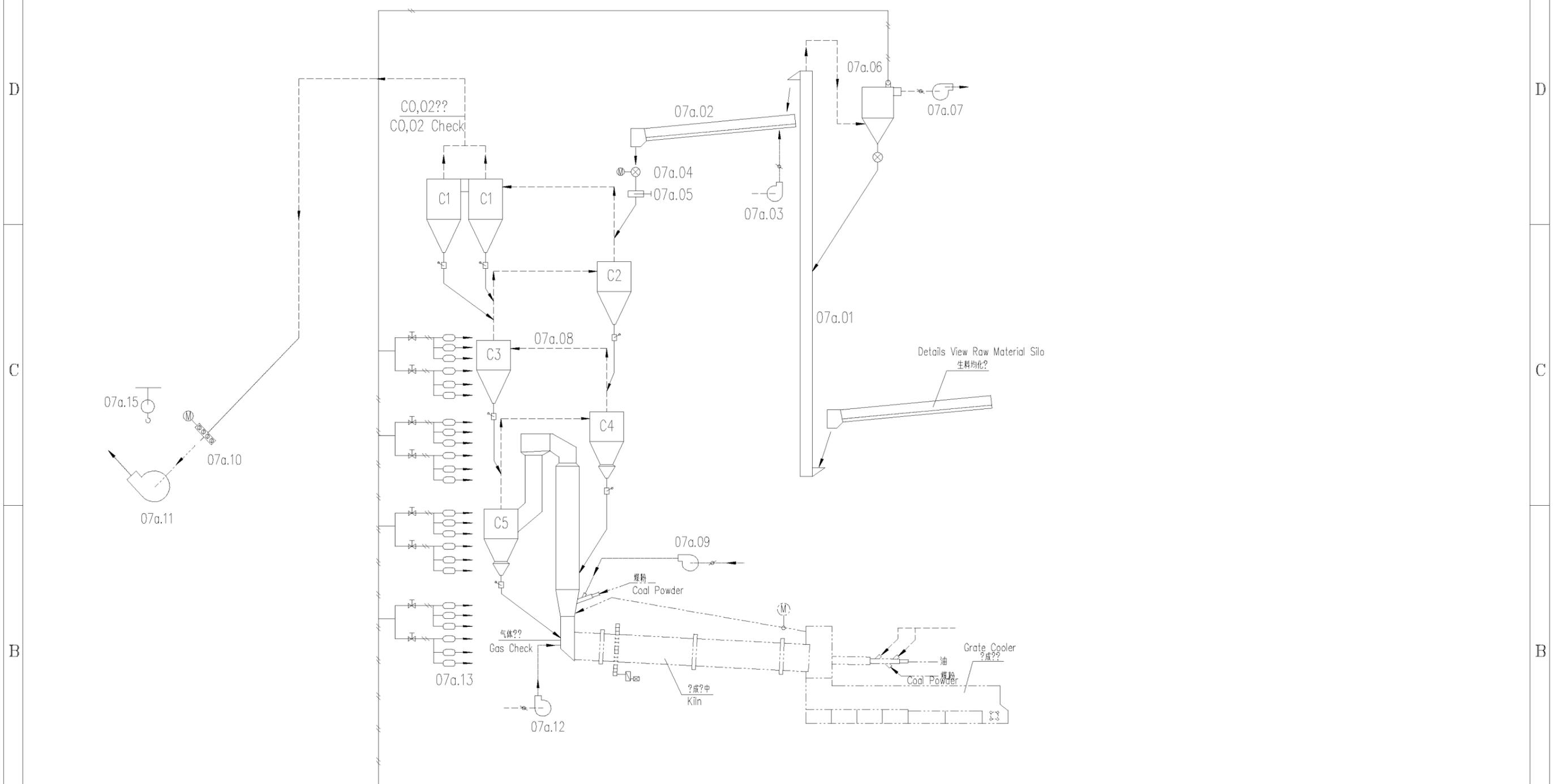


added manual flaps

		LUYANG HEAVY INDUSTRIAL MINING MACHINERY & ENGINEERING DESIGN INSTITUTE		CERTIFICATE NO. 160030	
PRESIDENT APPROVED		PROJECT NAME ACL 2500TPD CEMENT PLANT		DWG. NO. YD01-11.00-GS01/09	
VERIFIED CHECKED DESIGNED		DWG. NAME 11.00 PULVERIZED COAL PREPARATION FLOW SHEET		STAGE CONSTRUCTION	
		SCALE 1:300		G	

12,Spet,2008

IF IN DOUBT PL. ASK.

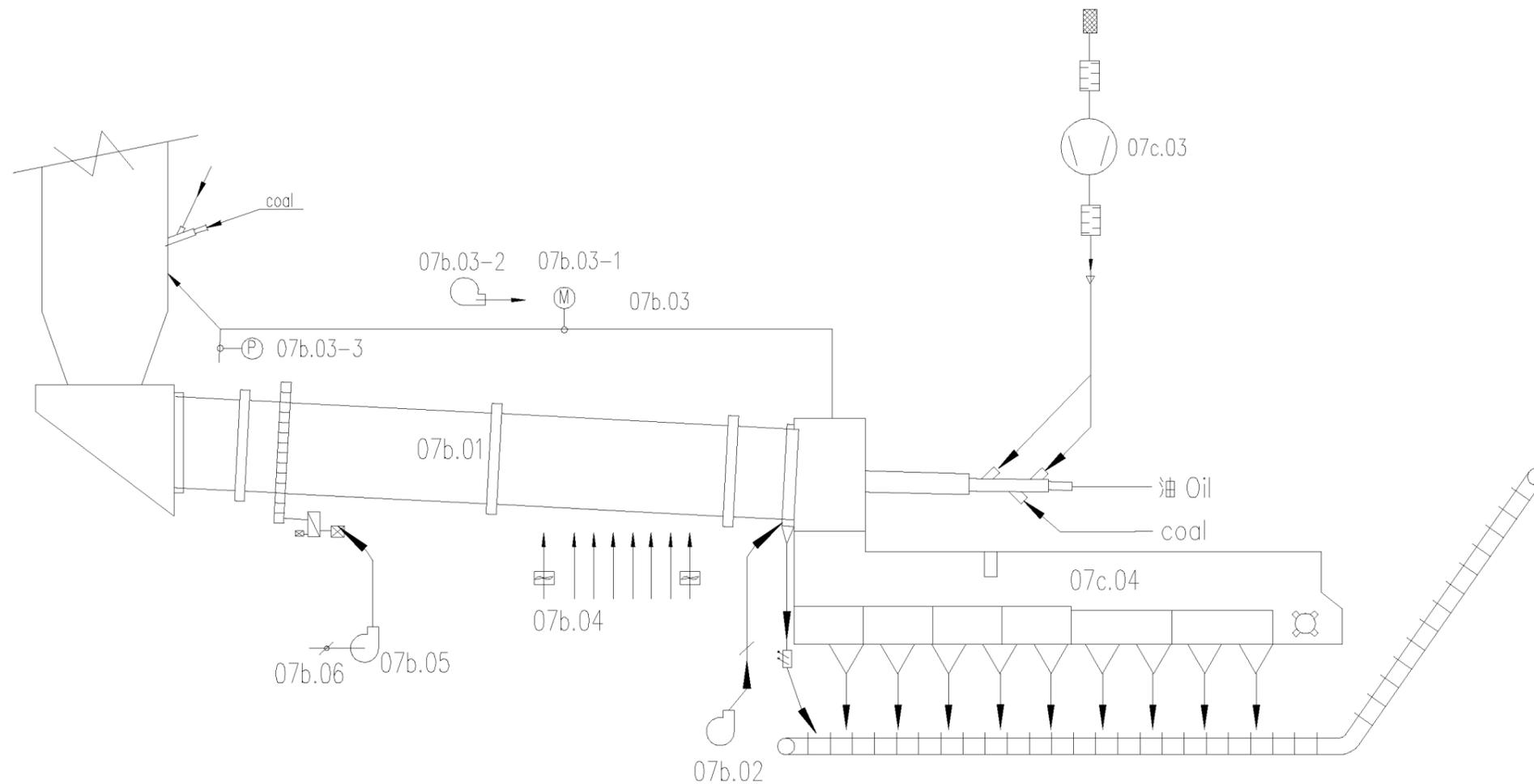


CUSTOMER		ADHUNIK CEMENT LTD.	
PROJECT		2500 T.P.D.	
Scale	1 : 120	Date	25.03.09
		Name	M.S.H.R.A
		Checked	
		Approved	
TITLE:-		DRAWING NO.	
FLOW SHEET		HTS/ADHUNIK/PH/GA-001-3	
REV. NO.		0	
REVISION		Sheet.	
DATE		1 OF 1	
BY		XXXXX.DWG	
CHD.			



HALLMARK TECHNICAL SERVICES PVT.LTD.  
PUNE:- 411038

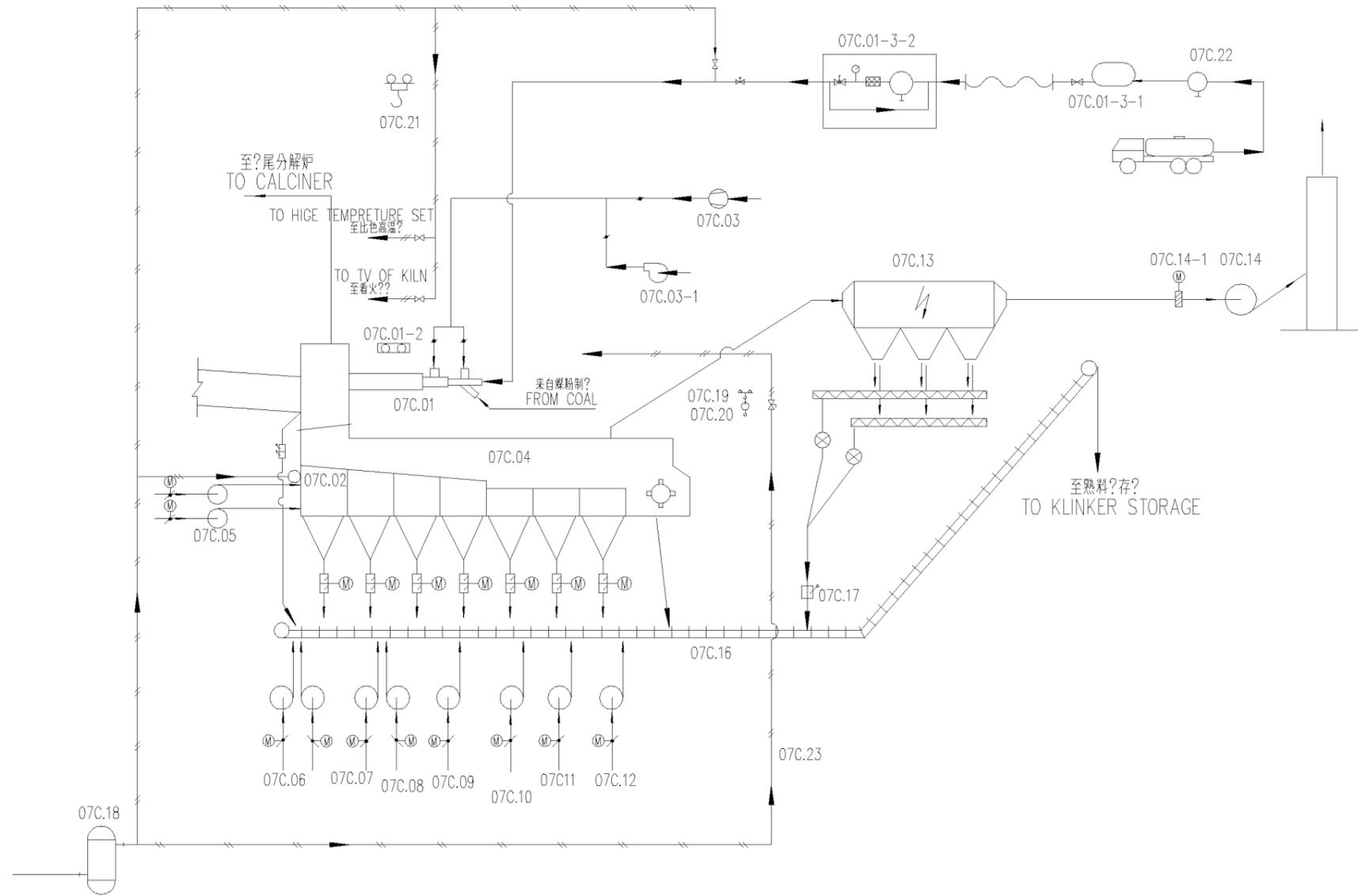
This drawing remains our property No. copying utilization or handing over to third parties is permitted without our consent according to the satipulations of civil law.



No change as on 10th Sept .08

 LUOYANG HEAVY INDUSTRIAL MINING MACHINERY & ENGINEERING DESIGN INSTITUTE				CERTIFICATE NO. 160030		
PRESIDENT		PROJECT NAME	ACL 2500TPD CEMENT PLANT			
APPROVED		DWG. NAME	07b.00 Rotary Kiln			
VERIFIED			FLOW SHEET			
CHECKED			STAGE	SCALE	DWG. NO.	YD01-07b.00-GS01/12
DESIGNED				1:100		F

06, MAR, 2008



No change as on 10th Sept .08

 LUOYANG HEAVY INDUSTRIAL MINING MACHINERY & ENGINEERING DESIGN INSTITUTE		CERTIFICATE NO. 160030	
PRESIDENT		PROJECT NAME	ACL 2500TPD CEMENT PLANT
APPROVED		DWG. NAME	07C.00 CLINKER COOLER FLOW SHEET
VERIFIED		STAGE	GS
CHECKED		SCALE	1:100
DESIGNED		DWG. NO.	YD01-07C.00-GS01/07
			F

06, MAR, 2008



## HOLTEC CONSULTING PRIVATE LIMITED

### **'Holtec Centre'**

A Block, Sushant Lok,  
Gurgaon - 122 001, Haryana, India  
Phones : +91-124-4047900, 2385096, 2385095\*  
Fax : +91-124-2385114, 2385116, 4047914  
Email : [info@holtecnet.com](mailto:info@holtecnet.com)

### **Registered Office**

01-0103 Imperial Tower, C-Block Community Centre, Naraina, New Delhi -110028  
Phone : +91-11-25771002 Fax : +91-11-25771001

**ANNEXURE R-17****TO WHOM IT MAY CONCERN****366**

I have examined the Purchase Register of **M/s Dalmia Cement (Bharat) Limited – Meghalaya Unit**, having its Registered office at Dalmiapuram Dist. Tiruchirappalli, Tamil Nadu - 621651 and plant located at Village: Thangskai, PO-Lumshnong, Dist: Jaintia Hills, Meghalaya, Pin code-793200 and according to the information and explanation given to me by the management, I hereby certify Year-wise detail of Coal and/or any other alternate fuel procured as follows:

Product	UoM	2014-15	2015-16	2016-17	2017-18	2018-19
Coal & Petcoke	MT	17,433	98,296	56,784	107,092	54,478
Slate	MT	141,927	151,294	93,904	181,618	213,359
Sawdust	MT			1,468	11,046	16,499
<b>Total</b>	<b>MT</b>	<b>159,360</b>	<b>249,590</b>	<b>152,156</b>	<b>299,757</b>	<b>284,337</b>

For Reeta Bhansali &amp; Co.

Chartered Accountants

FRN No. 328527E



(FCA. Reeta Surana)

Proprietor

Membership No. 302437

UDIN: 23302437BGZOEB4214

Date: 27.05.2023

Place: Guwahati

**BEFORE THE NATIONAL GREEN TRIBUNAL  
(PRINCIPAL BENCH), NEW DELHI  
ORIGINAL APPLICATION NO. 110 (THC)/ 2012**

**IN THE MATTER OF:**

Threat to life arising out of coal mining  
in South Garo Hills District

... Applicant

*versus*

State of Meghalaya & Others

... Respondents

**AND**

**IN THE MATTER OF:**

Dalmia Cement (Bharat) Limited

... Proposed Respondent

**VAKALTNAMA**

1. KNOW ALL to whom these presents shall come that I, Padmanav Chakravarty, authorised signatory of the above named proposed Respondent, Dalmia Cement (Bharat) Limited, do hereby appoint **SHRI MAHESH AGARWAL AND SHRI RISHI AGRAWALA, ADVOCATES" AGARWAL LAW ASSOCIATES, 19 BABAR ROAD, BENGALI MARKET, NEW DELHI-110001"** hereinafter called the Advocate to be My/our Advocate's in the above noted case and authorize him:
2. To act, appear and plead in the above noted case in this court in any other court in which the same may be tried or heard and also in the appellate courts.
3. To sign, file, verify and present pleading, applications, appeals, cross-objections or petitions for execution, review, revision, withdrawal, compromise or other petition, replies, objections affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.
4. To file and take back documents.
5. To withdraw, or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said case.
6. To take out execution proceedings.
7. To deposit, draw and receive moneys, cheques and grant receipts therefor and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.
8. To appoint and instruct any other Legal Practitioner authorizing him to exercise the powers and authorities hereby conferred upon the Advocate whenever he may think fit to do so and to sign the power of attorney on my/our behalf.
9. And I/we the undersigned do hereby agree to ratify and confirm acts done by the Advocate or his substitute in the matter my/our own acts as if done by me/us to all intents and purposes.
10. And I/we undertake that I/we or my/our authorised agent would appear in the court on all hearings and will inform the Advocate for appearance when the case is called.
11. And I/we the undersigned do hereby agree not to hold the Advocate or his substitute responsible for the result of the said case in consequence of his absence from the court when the said case is called up for hearing, or for any negligence of the said Advocate or his substitute.
12. And I/we the undersigned do hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the Advocate remaining unpaid, he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. If any costs are allowed for an adjournment, the Advocate would be entitled to the same.

DALMIA CEMENT (BHARAT) LTD.

AUTHORISED SIGNATORY

13. IN WITNESS WHERE OF I/we do hereunto set my/our hand to these presents of which have been understood by me/us this 30<sup>th</sup> day of May, 2023.

ACCEPTED:

(MAHESH AGARWAL)(RISHI AGRAWALA)

Advocates

AGARWAL LAW ASSOCIATES

19, Babar Road, Bengali Market

New Delhi-110 001"

PH.: 42200000

*Roham Jais*

*D/453/93* *D/1001/97*

DALMIA CEMENT (BHARAT) LTD

AUTHORISED SIGNATORY

CLIENT

