

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

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Decoding the Mines and Minerals (Development and Regulation) Amendment Act, 2021

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ABSTRACT

The Mines and Minerals (Development and Regulation) Amendment Act 2021³ brings about several reforms in the mining sector. It aims at optimally using the mineral industry's potential and capabilities in order to increase employment and investment in the mining industry, particularly coal. The Act has introduced several changes. Whether these amendments prove to be an instrument of over-exploitation of the natural resources and the environment or an apparatus to realise our dreams of self-reliance, only time will tell. The judiciary which has often been tagged as environment-biased, is yet to test the validity of this Amendment Act. This article tries to study the changes introduced by the MMDR Amendment Act, 2021 and its implication there off.

Keywords- MMDR Act, Amendments, Mines, Minerals, India.

The mining industry in India has immense underutilised scope and potential. India features amongst the top five coal producing countries in the world, only second to China⁴. Yet, to meet our exponential demands, India imports coal and minerals worth billions of dollars every year despite being the third largest storehouse of coal in the world⁵. It has been a common concern that India lags in actualizing its abilities qua its mining industry. Corruption and myriad of scams have dampened India's prospects in the field even further. To put the lack of actualization of India's mining capabilities into perspective, India has explored only 10% of its Obvious Geological Potential (OGP) so far and utilises only 5% of it for mining. Despite having similar potentials, the mining sector contributes around 7 to 7.5% of the GDP of countries like South Africa and Australia while it is only 1.75% of India's GDP⁶. In order to overcome such factors, overhauls in the sector were introduced in 2015 itself and the 2021

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³ The Mines and Minerals (Development and Regulation) Amendment Act, 2021, Sec 8A(7A), No. 13, Acts of Parliament, 2021 (India).

⁴ MONICA PHILALAY et al, COAL IN INDIA 2019 37 (2019).

⁵ M. Garside, *Coal - proven reserves of the top ten countries 2019*, STATISTA (JUNE 18, 2020), <https://www.statista.com/statistics/237096/proven-coal-reserves-of-the-top-ten-countries/>.

⁶ Shekhar Gupta, *Why MMDR Amendment bill will help unlock mining industry that has been under-performing*, THE PRINT (MAR 24, 2021, 3:40 pm), <https://theprint.in/opinion/why-mmdr-amendment-bill-will-help-unlock-mining-industry-that-has-been-under-performing/627587/>.

amendments seek to take it forward. The Mines and Minerals (Development and Regulation) Act, 1957⁷ was adopted to regulate the mining sector in India and postulates the conditions for obtaining and granting mining leases and related mining operations.

The Principal Act gave the central government power to reserve any mine (except coal, lignite and atomic minerals) for a specified end use⁸. These were called captive mines. The 2021 Act amends Section 8A of the Principal Act and removes any and all restriction on end use of minerals irrespective of the mines being captive or non-captive. The Act now permits sale of minerals by captive mines with a ceiling of 50% of annual mineral production, provided it has met the requirement of the end use plant linked with the mine and made additional payment as given in Schedule VI, in the manner prescribed by the Central Government. The capping of 50% can be further changed by the Central Government through notifications⁹. Schedule five and Schedule six have been added through these amendments to aid these clauses. The fifth schedule lists four minerals with specified additional amount to grant extension of mining lease when period of mining leases, other than the ones granted through auction, shall be extended¹⁰. The sixth schedule contains three lists, one for non-auctioned captive mines (other than coal and lignite), second for auctioned captive mines (other than coal and lignite) and third for coal and lignite. These three lists under schedule six specify the additional amounts to be paid minerals of captive mines to non-captive industries.

A new provision has been inserted by the way of these amendments for mines whose lease has expired. These mines may be allotted by the State Government with prior approval of the Central Government, to a Government Company or Corporation. Such lease shall be granted for a period not exceeding ten years or till selection of new lessee through auction, whichever is earlier¹¹. The Amendment Act brings a change in the transfer of statutory clearances too. The earlier Act stated that mines are leased to new persons after a mining lease has expired. And within two years of such transfer of lease, the new lessee must file for fresh clearances.¹²Whereas, the Amendment Act provides that all permissions and licences issued under this Act will remain in effect until the reserves have been mined, after which they will be transferred to the next successful bidder.¹³

Under the Principal Act, provision existed for a non- exclusive reconnaissance permit, which

⁷ The Mines and Minerals (Development and Regulation) Act, 1957, No. 67, Acts of Parliament, 1957 (India).

⁸ Ibid, MMDR Act, Sec. 8A

⁹ Supra 4, MMDRA Act, Sec 8A(7A).

¹⁰ Ibid, MMDRA Act, Sec. 8A (8).

¹¹ Ibid, MMDRA Act, Sec. 8B (1).

¹² Ibid, MMDRA Act, Sec. 8B.

¹³ Ibid, MMDRA Act, Sec. 8B (1).

was allowed for a preliminary prospecting of mineral in an area.¹⁴ The introduced amendments remove such licence permit and states that any existing permit under the previous Act will lapse on the date of the commencement of the 2021 Amendment Act. Any expenses incurred in reconnaissance or prospecting operations are dictated to be reimbursed to individuals whose rights have lapsed.

Further, the 2021 amendment Act grants more powers to Central Government. Whereas the Principal Act empowered State Governments to manage the auction process of the mineral concessions except coal, lignite and atomic minerals, the amendment introduces an active role to be played by the Central Government, by bestowing upon it the authority to set a deadline for the completion of auction process after consulting with the respective State Government. In circumstances when the State Government have difficulties or fail to notify the areas or hold auctions within the stipulated period, the Central Government can take over the process from states.¹⁵ The Amendment Act also provides that when a mining lease lapses either due to non-operation of mining within two years of the grant of lease or due to discontinued mining operation for a period of two years; such lease will not lapse if a concession is provided by the State Government. An application is to be made by the holder of the lease before it lapses. A one-time extension of one year may be granted by the State Government.¹⁶

With the amendment of section 4(1) of the Principal Act, private entities may also be notified by the central government with enhanced technology to undertake mineral exploration activities¹⁷. In the Amendment Act, a new sub-section (5) to Section 9C has been introduced¹⁸, which enables the notified private entities to seek funding from the National Mineral Exploration Trust (NMET)¹⁹. The NMET was established by the central government for regional and detailed mine exploration, pursuant to the 2015 amendments to the MMDR Act, 1957.

The 2021 amendments to the MMDR act have few key takeaways, firstly, by allowing captive miners of both coal and other minerals (excluding atomic minerals) to sell up to 50 per cent of their production, after meeting the requirements of the end-use plant and on paying additional royalty to the state government, the 2021 amendment clearly absolves the distinction between captive and non-captive mines, resultantly implying that the ores extracted from captive mines

¹⁴ Supra 8, MMDR Act, Sec. 10C.

¹⁵ Supra 4, MMDRA Act, Sec. 11.

¹⁶ Ibid, MMDRA Act, Sec. 4A.

¹⁷ Ibid, MMDRA Act, Sec. 4(1).

¹⁸ Ibid, MMDRA Act, Sec. 9C95).

¹⁹ Supra 8, MMDR Act, Sec. 9C.

would no longer be only used by captive industries. Upon paying the additional charges, the lessee would be able to sell the minerals in the open market. In a manner, this move would open India's mines and minerals market for the private players which was earlier dominated by captive industries only, thus enabling surge in production and supply of minerals, warranting economies of scale in mineral production, stabilizing prices of ore in the market and bringing supplementary revenue. Further, the 2021 amendments seek to counter '*red-tapism*' and '*license raaj*' head-on by introducing the provision for transfer of statutory clearances. The new provisions allowing for these clearances to be valid throughout the lease period of the new lessee as opposed to the two years term, previously mandated in the Act, definitely would contribute in diminishing the tedious procedures alluring more and more players to participate in the mining sector. Also, the provisions for allocation of mines whose leases have expired to government companies in certain cases would be instrumental in achieving increased productivity by eliminating the chances of mines unexploited for some reason or another, after their allocation. The provision regarding extension of lease to government companies on payment of additional amount would also aid in ensuring continuity in exploitation of the unused resources.

Nonetheless, there are contentious side to these amendments as well, it empowers the central government to conduct auctions or re-auction processes related to mineral concessions, if a state government fails to complete the auction process in a specified period. The said specified period has to be specified by the central government, although, after consultation with the state governments. This provision in itself gives leeway to the union government to surpass its federal responsibilities by not giving due weightage to its consultations with the state governments and nonetheless specify the time period for auctions to complete. Another amendment that seeks to surpass the federal structure is the Central Government may give directions regarding composition and utilization of fund by the District Mineral Foundation (DMF)²⁰. The Principal Act requires that the District Mineral Foundation is to be established as a non-profit body by the State Governments, to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government²¹. The composition and functions of the District Mineral Foundation are also prescribed by the State Government. The amendments putting DMFs under control of the central government seems to be bypassing the constitutional mandate of federalism. Moreover, the funds under DMF are meant to be utilized for the betterment of the districts affected by

²⁰ Supra 4, MMDRA Act, Sec. 9B (3) Proviso.

²¹ Supra 8, MMDR Act, Sec. 9B.

mining activities and it is in best interest of the people that such trusts should remain decentralized for the concerns in every affected district would be unique and so has to be the usage of funds for their benefits. A centralized one-size-fits-all kind of approach would do no good in such a situation.

The idea behind changes made to the MMDR Act seems to be promoting ease of doing business for the industry and streamline processes to harness the full potential of mining sector and generate higher revenues, but these mining reforms may end up against the interests of the mining-affected communities and environment at large. The Government, through its Union minister for Coal Mr. Prahlad Joshi, has shown its trust in these reforms. He writes “The MMDR reforms will give new ‘LIFE’ to the mining sector, where ‘L’ stands for Long-term impact, ‘I’ for Immediate boost to mineral production, ‘F’ for Focus on public welfare, and ‘E’ for Ease of Doing Business.²²” While it is true that the mining sector in India desperately needs restructurings in practice and investments in capital by inviting private and foreign players into its realm, the reforms and investments are needed more so in cleaner technologies and fairer labour and employment practices. The goal is understood, it is to actualize India’s potential in mining sector and reducing our imports. But, realizing this goal while neglecting environment and ecology would not only be short-sighted but disastrous in the longer run. The 2021 amendment prioritizes development over ecology, disregarding the concerns over mine-pollutants and effects of mining over environment and people displaced due to mining operations. In its quest to fulfil the notion that is ‘*Atmanirbhar Bharat*’, the Indian Government is keen on these amendments stipulating that all existing permissions, clearances and licenses are either continued, extended or transferred to the consecutive bidder by maintaining continuity without wasting any time on these purely administrative hassles unless minable resources are exhausted and India’s needs are fully met.

²² Prahlad Joshi, *MMDR reforms to give new life to mining sector*, FINANCIAL EXPRESS, April 06, 2021.