

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

WRIT PETITION (M/S) NO.3351 OF 2023

21ST DECEMBER, 2023

M/s Adi Gold Mining Pvt. Ltd.

.....Petitioner.

Versus

State of Uttarakhand & others

....Respondents.

Counsel for the Petitioner : Mr. Piyush Garg, learned counsel holding brief of Mr. Nachiketa Vajpayee, learned counsel.

Counsel for the Respondents : Mr. V.D. Bisen, learned Brief Holder.

The Court made the following:

JUDGMENT: (per Hon'ble Sri Rakesh Thapliyal)

By the instant writ petition, the petitioner is praying for the following reliefs:-

"i) Issue a writ of mandamus or any other appropriate Writ, Order or Direction, thereby directing the Respondent No.2 to recall the Office Memo bearing No.274/VII-A-1/188/2005, dated 11.09.2023, vide which the LOI dated 26.12.2007 granted to Petitioner was cancelled and the concerned LOI is restored as operative and effective; and

ii) Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction, thereby directing the Respondents to relax the condition requiring the Petitioner to obtain a clearance from NBWL or grant reasonable time of a minimum of 12 months, to the Petitioner to obtain the same; and

iii) Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction, thereby allowing the Petitioner to execute the mining lease deed; or in the alternative

iv) Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction, thereby directing the Respondents to duly consider the Annexure P-10 representation made by the Petitioner".

2. Brief facts of the case are that the petitioner's firm, namely, M/s ADI Gold Mining Pvt. Ltd., involved in mining operations having registered office at Bangalore, and on 10.03.1997, a Memorandum of Understanding (*for short "MoU"*) was entered into between the Uttar Pradesh State Mineral Development Corporation Ltd. and Pebble Creek Resources Ltd. to form a joint venture company for the purposes of exploration and exploitation of the valuable minerals, and in terms of the said MoU, the petitioner's company became a subsidiary of Pebble Creek Resources Ltd., which had assigned its rights and obligations under the MoU to the petitioner.

3. On 23.09.1998, the erstwhile State of Uttar Pradesh granted a Prospecting License to the petitioner for a period of three years in Village Baida, Gadali, Bijori, Dounikhela etc. of Tehsil Didihat, District Pithoragarh, and on the basis of the said Prospecting License, the petitioner executed the Prospecting License deed on 12.06.2000, and carried out detailed mining prospecting operations.

4. Subsequently, the petitioner preferred an application on 11.03.2005 for seeking grant of mining lease over an area of 3.86 sq. km. (380 hectares), which was recommended by the State Government to the Ministry of Mines, Government of India, for approval.

5. Thereafter, the Nodal Officer and the Chief Conservator of Forests, Department of Forests, Dehradun, sent a letter on 24.09.2007 to the Chief Conservator of Forests (Central), Ministry of Environment and Forest, Government of India, Regional office at Lucknow, acknowledged the following conditions to be fulfilled by the petitioner, which are as under:-

*"(i) A sum of Rs.4,43,256/- was deposited by the Petitioner, which was to be transferred to Compensatory Afforestation Fund Management and Planning Authority, Uttarakhand (hereinafter referred as "**CAMPA**") for the purpose of afforestation in land admeasuring twice the size of the subject area to be affected because of the mining operations;*

(ii) A sum of Rs.32,85,000/- towards NPV was duly deposited, which was to be transferred to CAMPA; and

(iii) A sum of Rs.5,00,000/- was duly deposited for the purpose of afforestation on the vacant areas of land on either side of the proposed roads for mining operations".

6. Thereafter, on 26.12.2007, the Letter of Intent (*for short "LOI"*) was issued to the petitioner by the Industrial Development Department, Government of Uttarakhand, for the purpose of granting mining lease over an area of 3.86 sq. km. (380 hectares) for a period of thirty years and pursuant thereto, the petitioner submitted a detailed mining plan. Thereafter, the Indian Bureau of Mines, *vide* approval letter dated 02.09.2008, approved the mining plan submitted by the petitioner, and following by the aforementioned approval of the mining plan, environmental clearance was also granted

to the petitioner by the Ministry of Environment & Forests, Government of India, *vide* letter No.J11015/434/2008, dated 12.06.2009.

7. Thereafter, the petitioner requested the District Magistrate, Pithoragarh to forward the proposal for grant of forest clearance to the appropriate authorities, on which, the Chief Wildlife Warden, Uttarakhand, submitted his comments and opinion, and the petitioner, *vide* letter dated 27.01.2010, requested the Director, Ministry of Environment and Forests, Regional Office, Lucknow, to forward the proposal for grant of forest clearance to the appropriate authorities.

8. In the instant writ petition, the petitioner is aggrieved by the O.M. dated 11.09.2023, whereby the LOI issued in favour of the petitioner, on 26.12.2007, has been cancelled. Against the aforesaid O.M., whereby the LOI issued in favour of the petitioner in the year 2007, was cancelled, the petitioner submitted a representation on 15.11.2023.

9. Learned counsel for the petitioner submits that the LOI was cancelled arbitrarily, unfairly and unreasonably, which is violative of fundamental rights of the petitioner. He further submits that in respect of the said area, the petitioner has invested a huge amount towards the prospecting mining operations, purchase of equipment, payment to the Government/ administrative fees etc.

10. I have perused the impugned O.M., by which, the LOI issued in favour of the petitioner, has been cancelled.

11. The impugned O.M. gives reference of the provisions of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, and Section 10(2)(c) of the said Act, provides as under:-

"(c) where the Central Government has communicated previous approval as required under sub-section (1) of section 5 for grant of a mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfilment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act: Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of this subsection except with the previous approval of the Central Government."

12. The impugned O.M. further gives reference of a notification of the Government of India, dated 04.03.201, which also provides as under:-

"After receipt of letter of compliance under sub-rule (1), the state government shall issue an order for grant of the mining lease within a period of sixty days from the date of receipt of such letter subject to verification of fulfillment of the conditions mentioned in the letter of intent or previous approval of the Central Government, as the case may be: Provided that in case the condition as mentioned in the (i) letter of intent issued by the State Government, or (ii) previous approval granted by the Central Government are not

fulfilled, the State Government shall, after giving the applicant an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant within a period sixty days from the date of receipt of letter of compliance, refuse to grant a mining lease for non-compliance of conditions mentioned in the letter of intent or the previous approval of the Central Government, as the case may be."

13. After taking into consideration the provisions of the Act No.10 of 2015, i.e. the Mines and Minerals (Development and Regulation) Amendment Act, 2015, and further taking into consideration the notification of the Government of India, dated 04.03.2016, it has been observed in the impugned O.M. that the LOI was issued in the year 2007, subject to certain conditions, and one of the important condition, was to obtain the clearance/ approval from the National Board of Wildlife, but even after the 15 years from the date of issuance of the LOI, no such approval has been obtained by the petitioner.

14. As it appears from the impugned O.M. that despite several opportunities, every time, time were sought for obtaining the approval, due to which, the Government suffered the financial loss. Admittedly, the LOI was issued with certain conditions, and the petitioner has to fulfill the same, but despite this, even after 15 years from the date of issuance of LOI, the conditions have not been fulfilled by the petitioner.

15. The impugned O.M. further gives reference that the MoU entered into between the Uttar Pradesh State Mineral Development Corporation Ltd. and M/s Pebble Creek Resources Ltd., was cancelled by the Province of British Columbia, and since the said MoU is no more in existence, therefore, no right is accrued in favour of M/s Adi Gold Mining Pvt. Ltd. (petitioner *herein*).

16. As it appears from the reliefs, as sought in the present writ petition, the petitioner is praying for restoration of LOI, which was issued on 26.12.2007, and admittedly, the petitioner has to fulfill the conditions of the LOI, which, admittedly, have not been fulfilled by the petitioner.

17. The petitioner is claiming the right pursuant to the LOI, though it is settled principle of law that Letter of Intent (LOI) does not confer any legal right to get the mining lease.

18. The Division Bench of this Court, in the case of ***Ultra Tech Cement Ltd. vs. State of Uttarakhand & others (Special Appeal Nos.101 and 102 of 2017)***, decided on 18.05.2017, clearly observed that the letter of intent is a concept, which is not found in the provisions of either the Act, or the Rules, but it is common case that issuance of letter of Intent has grown up as a matter of practice over the years. The issuance of letter of intent is

nothing, but a stage prior to actual grant of prospecting license or lease, as the case may be.

19. Undisputedly, despite the issuance of letter of intent to the petitioner in the year 2007, no attempts were made by the petitioner to fulfill the conditions, as stipulated in the letter of intent, and as observed in the impugned O.M. it also causes huge revenue loss to the Government.

20. It is to be remembered that a fair, transparent and equitable dispersal of mineral rights is certain to fetch the Government revenue, which is the most scarce resource for the Government to carry out its multifarious activities as a welfare State.

21. Learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court, in the case of ***State of West Bengal & Another vs. M/s Chiranjilal (Mineral) Industries of Bagandih & Another***, but the same is not applicable since the facts of the said case were on different footing.

22. In the present case, the petitioner was sleeping over the matter since 2007, when the LOI was issued, now in the year 2023, the petitioner is asking restoration of LOI. Despite the fact that the petitioner voluntarily accepted the LOI, which stipulated certain conditions, which admittedly, the petitioner has not fulfilled.

23. After perusing the impugned O.M., I do not find any illegality in the same and the same is a well- reasoned order.

24. The present writ petition is totally misconceived and *devoid* of any merit, and the same is, accordingly, dismissed.

25. Pending application, if any, also stands disposed of.

(RAKESH THAPLIYAL, J.)

Dated: 21st December, 2023

NISHANT