

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

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CCCA NOs.104 OF 2002 AND 138 OF 2003

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C.C.C.A.No.104 of 2002:

Between:

The Andhra Pradesh Mineral Development Corporation
Ltd. rep. by its Vice Chairman and Managing Director
Sri Priyadarshi Dash

.... Appellant

Vs.

M/s.Pottem Brothers, Hyderabad rep. by its Managing Partner P.Nageswara Rao

.... Respondent

DATE OF JUDGMENT PRONOUNCED: 04.02.2016

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

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1. Whether Reporters of Local newspapers may
be allowed to see the Judgments?

2. Whether the copies of judgment may be marked
to Law Reports/Journals

3. Whether Their Ladyship/Lordship wish to see the
fair copy of the Judgment?

JUSTICE RAMESH RANGANATHAN

*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

AND

*** THE HON'BLE SRI JUSTICE S.RAVI KUMAR**

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! Counsel for the appellant: Sri Y.Chandrasekhar

^ Counsel for respondent: Sri V.L.N.G.K.Murthy &

Sri V.Nitesh

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? Citations:

1. 62 IA 89 PC
2. (1986) 2 SCC 378
3. [1817] 6 M & S 160 at 165
4. [1984] 2 SCR. 290
5. (Judgment in CCCA No.272 and 275 of 2007 dated 30.09.2011 (APHC)(DB)
6. (1941) 2 All ER 11
7. AIR 1962 SC 83
8. (1989)1 SCC 101
9. AIR 1967 SC 1480
10. (1991)4 SCC 139
11. AIR 1976 Gujarat 154
12. (1987) 2 SCC 160)
13. (1996) 3 ALL ER 193
14. (1928) All ER 763
15. (1843-60) All ER 461 = (1854), 9 Exch. 341
16. (1887), 20 Q.B.D. 79
17. (1949) 2 KB 528
18. (1911) A.C. 301
19. AIR 1982 Delhi 267

20. (1969) I AC 350
21. (1967) I QB 278 (294)
22. AIR 1955 Andhra 148
23. AIR 1958 Punjab 440
24. 2011 (3) ALD 270
25. (1893) 6 R 67
26. AIR 1961 Cal 359 (D.B)
27. (2003) 1 SCC 240
28. AIR 1983 Cal 337
29. (1994) 1 ALT 293
30. 1969(1) AC 350 (HL)
31. 36 Cal 617
32. 2005(2) All ER 71
33. 26 Bom 744
34. (2009) 12 SCC 1
35. AIR 1954 Madras 119
36. AIR 2004 AP 18
37. AIR 1952 Calcutta 335
38. (1956) 2 All ER 145 at 160 : (1956) AC 696 at 728
39. 1926 A. C. 497
40. AIR 1964 Rajasthan 205
41. AIR 1954 SC 44
42. AIR 1961 Mysore 29
43. 1945-1 MLJ 417: A I R (1945) P C 144
44. ILR (1959) 9 Raj 1217 : (AIR 1960 Raj 138
45. 24 C. W. N. 703

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE S.RAVI KUMAR

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CCCA NOs.104 OF 2002 AND 138 OF 2003

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COMMON JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

CCCA No.104 of 2002 has been filed by the A.P. Mineral Development Corporation Limited against the judgment and decree passed by the II Senior Civil Judge, City Civil Court, Hyderabad in O.S. No.496 of 1994 dated 22.02.2002. The appellant herein is the defendant in O.S.No.496 of 1994 filed by M/s. Pottem Brothers, Hyderabad seeking payment of Rs.39,49,657.23, future interest at 18% per annum from the date of the suit till realisation, and the costs of the suit. C.C.C.A.No.138 of 2003 is filed by the Plaintiff in O.S.No.496 of 1994 aggrieved by the judgment and decree passed therein to the extent the Court below deducted an additional sum of Rs.30/- per metric tonne as expenditure incurred by the plaintiff for excavating the ore from the mine. Parties in these two appeals shall, hereinafter, be referred to as they are arrayed in O.S.No.496 of 1994.

In the plaint filed in O.S. No.496 of 1994, the plaintiff stated that an agreement was executed on 05.12.1992 for a period of two years effective from 16.12.1992 for raising-cum-sale of manganese ore; the agreement required them to raise a minimum 4500 metric tonnes of manganese ore in the first year, and 6000 metric tonnes during the second year; the consideration to be paid by them to the defendant was a minimum of Rs.17,500/- per month for 500 metric tonnes at Rs.35/- per metric tonne for the first year; the minimum consideration for the second year was fixed at Rs.20,000/- per month for 500 metric tonnes at Rs.40/- per metric tonne; Clause 3.2 of the agreement exempted the plaintiff from paying minimum consideration during the gestation period of three months from the date of commencement of the contract; the plaintiff had brought to the knowledge of the defendant, at the time of submission of the tender and while entering into the contract, the bad condition of the mine and the haphazard and illegal manner in which mining was done earlier; right from the inception of the agreement, the defendant made it difficult for the plaintiff to carry out mining work; they were restricted to the old pits, qualified staff were not deputed to the site, and mining and working plans were not supplied; the defendant deliberately delayed issuing permits for transporting the mined ore; they undertook backlog work after taking necessary precautions as required under the law; the defendant reviewed their mining activity from time to time, and reported its satisfaction; after entering into the contract, the plaintiff informed the defendant that they had secured supply orders from four companies/firms for the first year; these four parties had also agreed that the supply orders would be on the same terms and conditions in the second year also; the

plaintiff produced 2,798.60 metric tonnes of manganese ore by the end of July, 1993, and supplied 1252 metric tonnes of Ore to their customers; they could not, subsequently, keep up supplies to their customers on account of the breach of the contract by the defendant, including their deliberate failure to issue necessary permits for transporting the pit-head stock of 1546.60 metric tonnes, inspite of payment of royalty and labour cess; on account of heavy rains during the intervening night of 02.08.1993 and 03.08.1993, and due to existence of old dumps of the earlier working, there was a huge landslide on the hang wall side of the working area near bore hole No.5 resulting in stoppage of mining activity thereat; in compliance with Clause No.17 of the agreement, while bringing these facts to their notice within 72 hours, the defendant was requested to take immediate action and permit the plaintiff to commence work in new areas to enable them to keep up supplies to their customers; the defendant, by their letter dated 13.08.1993, directed the plaintiff to take up work near bore hole No.7 suspending all operations near bore hole No.5; the plaintiff continued to work at bore hole No.7 though they had requested the defendant to permit them to carry on mining activity in new areas; the condition at bore hole No.7 was far worse than the conditions at bore hole No.5; the defendant was informed that it would take at least three months to secure production near bore hole No.7; when the plaintiff started the work of removing backlog overburden, and formation of benches, they were ordered by the Director of Mines Safety, Bhubneshwar Region to remove the existing dangers, and to stop all mining work; the plaintiff informed the defendant that, till this order was vacated, they were not liable to pay minimum consideration in view of Clause 17 of the Agreement dated 05.12.1992; by their letter dated 04.10.1993, they brought to the notice of the defendant regarding imposition of prohibition, of employment of contract labour in manganese mines, by the Department of Labour (Central); they requested the defendant to continue the work on a joint venture basis till the end of the agreement period; the defendant prohibited the plaintiff from transporting the Ore which was already excavated by 31.07.1993, and threatened to terminate the contract on false and frivolous grounds; they were compelled to stop the work on 11.10.1993 because of prohibition of employment of contract labour; the defendant, by their letter dated 22.11.1993, directed them to pay Rs.70,000/-, as per clause 13 of the agreement, within ten days, failing which the contract would stand terminated with effect from 04.12.1993; they also threatened to sell the seized pithead stock, and adjust the security deposit; and the contract was, accordingly, terminated.

According to the plaintiff, the defendant had deliberately committed breach of the terms and conditions of the agreement because of which they could not keep up their commitment to their customers, and fulfil the orders on hand; they were able to supply only 1252.00 metric tonnes as against the orders on hand of 9000 metric tonnes for the first year, and 9500 metric tonnes for the second year; the defendant failed to supply mining and working plans, and provide qualified working staff; they deliberately prevented the plaintiff from carrying on mining activity at new boreholes or in new areas; they did not issue the required permits inspite of receiving consideration (for the period during which the ore was mined), and royalty and cess charges; by the illegal seizure of the pithead stock, and illegal termination of the contract, the plaintiff had suffered losses amounting to Rs.39,49,657.23; and the defendant was liable to compensate them for such losses.

In their written statement, the defendant-Corporation stated that they had issued a tender in the year 1992 for raising production of manganese ore, and purchase of the ore produced at Baguvalasa; plans and sections were made available, in the office, for the plaintiff's reference; before undertaking the work, the plaintiff had visited the area and had taken stock of the prevailing conditions; they had furnished an undertaking, in Appendix-2 of the tender document, that they had examined the location where the said work was to be undertaken; the plaintiff did not form safe benches as required by the Metalliferous Mining Regulations, 1961 ("Regulations" for short); the whole extent of 115 acres was made available to the plaintiff to work in accordance with the Regulations; while the plaintiff was required to produce a minimum of 4,500 MTs during the first year i.e., from 16.12.1992 to 15.12.1993 taking into consideration the gestation period of 3 months, and a minimum of 6,000 MTs during the second year of the contract, they had actually produced only around 2,800 MTs from 17.01.1993 (the date on which they commenced operations) till 11.10.1993 (the date on which they voluntarily stopped working the mine); the plaintiff lifted 1,250 MTs after payment of consideration, and defaulted in paying consideration of Rs.17,500/- per month after July, 1993; officers of the defendant, time and again, advised the plaintiff to form safe benches to carry out systematic mining; instead of utilising the gestation period of 3 months, i.e., from 16.12.92 to 15.03.93, for development of the mine systematically with all safety measures, by forming proper benches and removal of the required overburden, the plaintiff commenced work on 17.01.93 and resorted only to deepening the existing

old pit; they removed the ore already exposed, and did not form safety benches as required under the statute, which resulted in the Director of Mines Safety, Bhubaneswar passing prohibitory orders under Section 22(3) of the Mines Act; the plaintiff highlighted that the developmental work to be carried out was non-productive, although they were bound to do so under the terms of the contract; they voluntarily stopped operations w.e.f. 11.10.93, and did not resume work even after the defendant directed them to do so; the plaintiff, by their unscientific operations, had caused breach of the terms of the contract; and the defendant had deputed all technical personnel as required under the contract.

The defendant further stated that the plaintiff claimed to have secured orders for 9,000 MTs for the first year, and 9,500 MTS for the second year; this showed that they intended to effect supplies from sources other than the area contracted with the defendant; the defendant was not a party to the orders procured by the plaintiff; award of tender, and performance of the contract, is subject to government regulations and directives from time to time; if the plaintiff really intended to supply the quantity, against the supply orders received by them, they would have lifted the stock of 1,546.60 MTs, valued by them at Rs.425/- per MT for Rs.6,57,305/-, paying the outstanding nominal consideration of Rs.70,000/-; it is evident that either the stock did not confirm to the quality requirements of the buyers, or the plaintiff did not wish to fulfill their so called contractual commitments; their contention that, on account of the Corporation's failure to issue necessary permits, they could not keep up their commitments to their customers is false; collapse of bore hole No.5 was only because of non-formation of safe benches as per the Regulations; officers of the Corporation gave clear cut instructions, in the month of August, 1993, regarding the manner in which the plaintiff should carry on workings in the next two months, so that the prohibitory orders were lifted at the earliest; the plaintiff agreed to carry out working of safe benches; five sets of copies of the plans and sections were sent to the mines manager, and the plaintiff was asked to contact him and take copies thereof for their perusal; the plaintiff did not undertake developmental work either at bore hole no.7 or near bore hole no.5; the prohibition imposed by the Director of Mines Safety, Bhubaneswar extended to all the quarries of the mines, and was not restricted only to bore hole no.5; the plaintiff did not carry out any overburden work in bore hole no.5, 7 or 11, or anywhere in the leased area; disregarding the instructions

given by the Corporation to carry out developmental work, the plaintiff voluntarily closed operations w.e.f. 11.10.1993 causing breach of the contract; and having closed mining operations, because of the Government prohibiting employment of contract labour in the mines, the plaintiff is precluded from claiming damages from the Corporation in view of the force majeure clause which discharged the defendant of their contractual obligations if performance of the contract was not possible due to the regulations of the Government.

The defendant also stated that they had pointed out, in their letter dated 22.11.93, various violations committed by the plaintiff under the contract; they had called upon the plaintiff to pay the consideration arrears of Rs.70,000/- within ten days failing which the contract would stand terminated w.e.f. 04.12.1993, and necessary action would be taken for recovery of all the dues/ losses/damages etc., after selling the pit head stock and adjusting the security deposit; the notice, terminating the contract, is not illegal; the defendant has been extending its cooperation right from the inception of the agreement; by unscientific and unsystematic mining operations, and without developing the mine as per the Regulations, it is the plaintiff who had caused breach of the contract, and had defaulted in payment of consideration; the plaintiff's claim of having suffered losses, amounting to Rs.39,49,657.23, is imaginary and fictitious; and the present suit is vexatious, and has been filed in gross abuse of the process of Court.

In O.S. No.496 of 1994, Sri P.Nageswara Rao, the Managing Director of the plaintiff-firm, was examined as PW.1 and Exs.A-1 to A-86 were marked as exhibits. Sri M. Venkata Rao, the permit manager of the defendant-Corporation, was examined as DW.1. Sri P.R. Krishna Gandhi, Company Secretary of the defendant-Corporation, was examined as DW.2 and Exs.B-1 to B-15 were marked as exhibits. Sri K.R. Srinivasan, Chartered Accountant of the plaintiff-firm was summoned by the Court and was examined as PW.2, and Exs.X-1 to X-49 were marked as exhibits.

The Court below framed the following two issues in O.S. No.496 of 1994:-

(1) Whether the plaintiff is entitled for the suit amount with interest as prayed for in the suit?

(2) To what relief?

On issue No.1, the Court below noted that the plaintiff had paid earnest money deposit of Rs.3,050/-, and security deposit of Rs.16,825/-; the agreement commenced from 16.12.1992 for a period of two years; the plaintiff was given a gestation period of three months, from the date of commencement of the contract, and was not required to pay any consideration during that period; the defendant was required to provide a qualified mines manager, a mine-mate, and a foreman; they were also required to provide working plans and mining plans to the plaintiff; on payment of statutory levies by the plaintiff, the defendant was required to issue permits for transportation of the material; the plaintiff was not obligated to pay minimum consideration during force majeure conditions; the admission of D.Ws-1 and 2, in their cross-examination, supported the claim of the plaintiff that they carried on mining work scientifically and systematically by forming proper safety benches, and that officials of the defendant had inspected and reviewed the workings carried out by them from time to time; since no information had been provided by the defendant, regarding existence of backlog over-burden, the plaintiff had to carry out the work of removal of huge quantities of backlog over-burden to ascertain availability of deposits in the mines; the pleadings in the written statement established that collapse of bore hole No.5 was not because of non-formation of safety benches, but on account of heavy rains; and the oral and documentary evidence adduced by the plaintiff, and the admission of D.Ws-1 and 2 in their cross-examination, established that the plaintiff had not committed breach of the contract on account of unscientific mining.

The Court below further held that there was no post of mines manager at the site; the defendant failed to provide mining plans; they intentionally withheld permits without just and reasonable cause; the plaintiff was forced to confine themselves to mining old pits at BH5 and BH7, and was not permitted to work in new areas within the earmarked 115 acres; the plaintiff had produced Exs.A-22, A-37, A-38, A-40, A-55 and A-66 letters to show that, inspite of their several requests to allot new areas for mining operations, the defendant had failed to do so; the plaintiff was directed to carry out development and rectification work at BH7 though there was no such stipulation in Ex.A-10 agreement; there was a force majeure condition on account of the natural calamity that occurred on the intervening night of 2/3.08.1993, and the prohibitory orders issued by the Director of Mines Safety on account of the old

workings; stoppage of work temporarily for one or two months, on account of the existence of force majeure conditions and orders passed by the Labour Enforcement Department, in no way prejudiced the interests of the defendant nor did it cause any loss to them; the plaintiff was always ready and willing to continue the work for the full agreement period of two years; the pithead stock of 1546.60 metric tonnes, worth Rs.6,57,305/-, was in the custody of the defendant at the mine site; there was no necessity for the defendant to terminate the contract on the ground of non-payment of minimum consideration, particularly when the force majeure condition was existing and when prohibition, under Section 22(3) of the Mines Act, was in force; and the defendant unjustly terminated the contract.

On the quantum of damages, the Court below observed that the average manganese content, as per Exs.A-57 to A-65, was 28%; even as per the tender schedule the manganese ore, in general, was of a grade ranging between 24 and 36%; its average comes to 30%; Ex.B-2 certificate does not contain either the date or the source from which the sample was taken; no suggestion was given to P.W-1 that the manganese content of the pit head stock was low; it must, therefore, be held that the ore in the pit head stock was not of low grade quality, but contained equal grade as mentioned in Ex.A-1 tender schedule; the value of the pit head stock was Rs.6,57,305/- at the rate of Rs.425/- per metric tonne; the order placed by M/s.Midwest Iron & Steel Co. Ltd, under Ex.A-17, discloses that the rate per metric tonne was Rs.425/- for manganese content of 25%; the defendant illegally seized the pit head stock; and the claim of the plaintiff was reasonable.

On the loss of investment on infrastructure and rectification works, the Court below held that the claim of the plaintiff, for Rs.4,57,739.11 ps, was proved as per Exs.X-1 to X-49; the plaintiff had assessed the quantum of expenditure, for excavating the Ore, at Rs.200/- per metric tonne and, on that basis, had calculated the profits for the first and second years; no suggestion was put to P.W-1, during cross-examination, with regards the cost of production and loss of profit per metric tonne; basing on the orders under Exs.A-15 to A-19, and considering the fact that there would be increase in the production cost on account of escalation of prices and other miscellaneous expenses, the cost of excavation should be quantified at Rs.230/- per metric tonne on the balance quantities; taking the price of supply to Visakhapatnam Steel Plant at Rs.340/- per metric tonne, to Mid West Iron and Steel

Company Limited at Rs.425/- per metric tonne, to S.K. Sarwagi & Co. Pvt. Ltd. at Rs.325/- per metric tonne, and to Nanubala Agencies at Rs.405/- per metric tonne, and after deducting Rs.230/- per metric tonne as expenditure, the Court below computed the loss of profits for both the years, and arrived at the total damages of Rs.34,30,667.11 ps. It also awarded the plaintiff interest at 18% per annum from the date of institution of the suit till the date of the decree; and at 6% from the date of the decree till realization. The Court below also awarded proportionate costs.

Elaborate submissions, both oral and written, were made by Sri V.L.N.G.K. Murthy, Learned Counsel appearing on behalf of the plaintiff and Sri Y. Chandrasekhar, Learned Counsel appearing on behalf of the defendant-Corporation.

The points that arises for consideration in these appeals are:

1. Whether collapse of the mine on the intervening night of 2/3.08.1993 was because of the plaintiff's failure to carry on mining operations in a scientific manner?
2. Was the plaintiff liable to pay consideration for the 577 metric tonnes of manganese ore extracted by them during the gestation period of three months?
3. Whether the defendant-Corporation had failed to discharge their statutory and contractual obligations of providing mining personnel and furnishing mining plans to the plaintiff?
4. Whether the contract provided for reciprocal promises, and whether failure on the part of defendant-Corporation to provide mining personnel and mining plans discharged the plaintiff of their obligation to pay minimum consideration?
5. Whether the plaintiff had acted illegally in excavating the ore from the mine even without mining personnel being provided and mining plans being furnished by the defendant?
6. Whether failure of the plaintiff to seek a declaration, that the contract was illegally terminated, disentitled them from claiming damages?

7. Whether the defendant-Corporation had prevented the plaintiff from carrying on mining operations in the entire 115 acres leased to them?
8. Whether the plaintiff had committed breach of the contract on their failure to pay minimum consideration, justifying termination of the contract by the defendant-Corporation?
9. Whether the defendant-Corporation had acted in breach of the agreement in not issuing transport permits to the plaintiff for transporting the excavated ore outside the mine?
10. Whether the plaintiff is entitled for damages for breach of the contract and, if so, the quantum of damages to which they are entitled to?
11. Whether the Court below was justified in deducting an additional sum of Rs.30/- per metric tonne towards cost of excavation of ore, and whether the plaintiff is entitled for payment of interest under the Interest Act, 1978?
12. Whether collapse of the mine on the intervening night of 2/3.08.1993, and prohibition of employment of contract labour in manganese mines by the Central Government, are force majeure events? and, if so, what are its consequences?
13. Whether the defendant-Corporation is justified in claiming ownership of the pit head stock in terms of Clause 10 of Ex.A-10 agreement? if not, what is the value of the pithead stock which the plaintiff is entitled to?

POINT NO.I:

Sri Y. Chandrasekhar, Learned Counsel for the defendant-corporation, would submit that the plaintiff was required, under the tender notice, to examine the site and satisfy themselves of the situation thereat; the plaintiff entered into the contract in Ex.A-10 only after understanding the nature of the work, after visiting the site and investigating the nature of the mining activity to be carried on by them; the plaintiff agreed to Clause 1.2 of Ex.A10 to remove waste/ overburden, and ensure formation

of proper benches as per the Regulations; this assurance was one of the reasons for their being awarded the contract; contrary thereto, the plaintiff had merely deepened the mines at bore hole No.5, and took out the ore without forming benches or removing the overburden; after the order was passed, under Section 22(3) of the Mines Act to stop the work, the plaintiff declined to carry out the work of removal of overburden and formation of benches on the flimsy ground that rectification was not part of its contractual obligation; the land slide, in the mine near bore hole No.5, occurred as the plaintiff had carried on mining operations without forming benches, and had indulged in unscientific mining; the defendant had, vide Ex.A-54 dated 22.11.1993, terminated the contract as the plaintiff did not carry on mining operations in a scientific manner; it was they alone who carried on mining activity in the reach, after execution of the agreement, till the mine collapsed; their contention that, due to old workings, the mine had collapsed is without basis as they had excavated nearly 2,800 Mts of manganese ore from January to July, 1993; Ex.A-42 letter of the Director of Mines Safety dated 30.08.1993 shows that collapse of the mine was due to unscientific mining; rains do not result in collapse of every mine; and if mining is done scientifically, by forming proper benches, no mine will collapse.

Sri V.L.N.G.K. Murthy, Learned Counsel appearing on behalf of the plaintiff, would submit the plaintiff had carried on systematic mining forming proper safety benches under the instructions of the defendant whose officials had inspected and reviewed the work from time to time; the defendant had complained for the first time, about unscientific mining, only in the termination letter in Ex.A-54 dated 22-11-93; the plaintiff had informed the defendant-corporation regarding the dangerous condition of the mine in the old pits, the old workings, the deep vertical cutting and the old dumps on the sides of the pits etc. in their offer letter in Ex.A-2 letter dated 20.08.1992 itself, and in several other letters; they had also made it clear to the Corporation that they were not to be held responsible for the old workings done prior to Ex A-10; and collapse of the mine on 2/3.08.1993 is because of the old workings, and not for any fault of the plaintiffs.

Clause 2(ii) of Annexure III of Ex.A-1 tender notice dated 20.08.1992 stipulates that the contractor should ensure making of proper benches as per the Regulations, and they should also observe all statutory regulations under the Mines Act, and the Mines Rules. Under Section 22(3) of the Mines Act, if the Chief Inspector, or an Inspector authorised in writing by the Chief Inspector, is of opinion

that there is urgent and immediate danger to the life or safety of any person employed in any mine or part thereof, he may, by order in writing containing a statement of the grounds of his opinion, prohibit, until he is satisfied that the danger is removed, the employment in or about the mine, or any part thereof, any person whose employment is not, in his opinion, reasonably necessary for the purpose of removing the danger.

By Ex.A-42 letter dated 30.08.1993 the Director of Mines Safety, Bhubaneswar Region informed the defendant that an inspection of the mine was caused on 27.08.1993, and certain contravention was observed during inspection; there were two pits which had been partially filled with old muck; there were old dumps on both the southern and the northern sides of these pits which were as deep as 15 to 18 metres; the mining operations were being done by cutting the ore at the bottom, and the sides of these old pits; though the sides were as high as 15 to 18 metres, neither were proper benches made nor had the sides been adequately sloped; a collapse of about 100 metres x 10 metres x 6 metres had already taken place from the north wall of the eastern side pit on 02.08.1993; further collapse was not ruled out; a number of overhangs were found to the tune of 1.5 metres; and the mines were being worked in contravention of Regulation 106 of the Regulations without any regard to the safety of the persons employed therein. The Director of mines safety opined that there was an immediate and urgent danger to the safety of the persons employed in all the quarries in the mines; and, in the exercise of his powers under Section 22(3) of the Mines Act, 1952, he was prohibiting, until the dangers were removed, employment, in all the quarries in the mine, of all persons whose employment was not necessary for removing the dangers. The Director of Mine Safety directed that normal mine operations should not be resumed unless the orders were vacated in writing.

Chapter-XI of the Regulations relates to mine workings. Regulation 106 therein, which relates to open-cast workings, stipulates that, in open-cast workings, the following precautions shall be observed, namely: (1) in alluvia soil, morum, gravel, clay, debris or other similar ground (i) the sides shall be sloped at an angle of safety not exceeding 45 degrees from the horizontal or such other angle as the Regional Inspector may permit by an order in writing, and subject to such conditions as he may specify therein; or (ii) the sides shall be kept benched, and the height of any bench shall not exceed 15 metres and the breadth thereof shall not be less than the height. Regulation 106(2)(a) stipulates that where float, or other similar deposit, is

worked by manual means on a sloping face, the face shall be benched and the sides shall be sloped at an angle of not more than 60 degrees from the horizontal; and the height of any bench shall not exceed six metres and the breadth thereof shall not be less than the height. Regulation 106(3) stipulates that, in excavation in any hard and compact ground or in prospecting trenches and pits, the sides shall be adequately benched, sloped or secured so as to prevent danger from the fall of sides. Regulation 106(5) stipulates that no person shall undercut any face or side, or cause or permit such undercutting as to cause any overhanging. Rule 15 of the Mineral Conservation and Development Rules, 1988 ("the Rules" for short) relates to open-cast workings and, under sub-rule (1) thereof in open cast workings, the benches formed shall be so arranged that the benches in the ore/mineral and overburden are separate so as to avoid mixing of waste with the ore/mineral. Rule 15(2) stipulates that the benches in the overburden shall be kept sufficiently in advance so that their workings do not interfere with the working of the ore/mineral.

While the inspection caused on behalf of the Director, Mines Safety shows that mining operations was undertaken by cutting the ore at the bottom and the sides of the pits and the sides, which were as high as 15 to 18 metres, were not adequately sloped and proper benches were not made, the plaintiff would contend that they had carried on systematic mining on scientific lines by forming proper safety benches; and the defendant had complained, for the first time about the unscientific mining, only vide Ex.A-54 letter dated 22.11.1993 terminating the agreement.

The existence of an old quarry, and the steep dip of the ore body therein, are referred to in clause III of Annexure II to the tender notice dated 20.08.1992 itself. Appended to the tender documents, in Appendix 2, is the proforma undertaking required to be furnished by the contractor to the Corporation, among others, that they had understood the nature of work, they had made such examination of the location where the said work is to be done, and such investigation of the work required to be taken up. As the plaintiff furnished the undertaking in Appendix 2, they must be presumed to have, even before they submitted their tender, made an examination of the location where the said work was required to be done, and to have caused investigation of the work to be taken up by them.

The fact that they were aware of the condition of the mine, and the haphazard manner in which the mine was earlier operated, is evident from Ex.A-2 letter dated 20.08.1992 whereby the plaintiff informed the defendant that so far mining had been done in an unscientific manner, and no safety measures were taken; deep trenches were constructed with vertical slopes upto a height of 60-70 feet, without any benches; the over-burden was left in a haphazard manner on the edges of the trenches; and they were not responsible for the past workings.

Again by Ex.A-22 letter dated 28.07.1993 (before collapse of the mine on 02.08.1993/03.08.1993), the plaintiff informed the defendant that they had commenced the work on 17.01.1993; when the work was in progress, they came to know that the mine was worked out 25 years back; since then illegal mining work had been carried out by various persons in a haphazard manner, with high vertical cuttings and under cuts; the entire mine was refilled with waste earth of the earlier workings; and the area had already been mined to great depths to a range of 30-35 metres with steep vertical cuttings.

By Ex.A-43 letter dated 07.09.1993, the plaintiff informed the defendant that prohibitory orders were issued because the old pits in the mine were haphazardly mined in the earlier years. By Ex.A-23 letter dated 04.10.1993, the plaintiff informed the defendant that the mine was haphazardly worked out with high vertical cuttings, and undercuts in earlier years by various people; and, because of this dangerous old pit, the Director of Mines Safety had prohibited mining operations, and had instructed that only development work be carried out so as to rectify and remove the dangers.

While the plaintiff was directed to form safety benches after collapse of the mine on 2/3.08.1993, the General Manager of the defendant-Corporation, in Ex.A-44 letter dated 05.10.1993, does not blame the plaintiff for collapse of the mine on the aforesaid days. By letter in Ex.A-46 dated 12.10.1993, the defendant-corporation informed the plaintiff that the mine was brought under Section 22(3) because of rains, and because of the minimum developmental work carried out by them. It is for the first time, by Ex.A-54 letter of termination dated 22.11.1993, that the defendant-corporation informed the plaintiff that they had worked the mine in contravention of Regulation 106; and, despite the Corporation's advice to undertake formation of safe benches in the over-burden, the plaintiff had failed to do so. The contents of Ex.A-54

letter dated 22.11.1993 are, by and large, the contents of Ex.A-42 letter of the Director of Mines Safety dated 30.08.1993.

By their letter in Ex.A-55 dated 06.12.1993, the plaintiff informed the defendant-corporation that they had carried out the work systematically and scientifically, following all the safety measures as per the Regulations; they had carried out the work under the constant supervision of the defendant's mines staff till 11.10.1993, which was also regularly reviewed by the Assistant Geologist, Visakhapatnam, and the General Manager (Tech.) from time to time; no officer of the Corporation had pointed out, at any point of time, that they were working the mine in contravention of the Regulations; there was no such remarks in the joint inspection report also; the Corporation had earlier lodged a complaint with the police regarding illegal mining activity, before the plaintiff commenced the work; they had simply reproduced the observations made by the Director of Mines Safety in his memo dated 30.08.1993; the prohibitory orders were issued by the Director of Mines Safety because of the old workings only, for which they could not be held responsible; and it was for the first time, by Ex.A-54 letter dated 22.11.1993, that false allegations were made only to terminate the contract.

D.W-1, in his evidence, admitted that, by the date of his assuming charge at Baguvalasa mines in the year 1992, the depth of the mine, at bore-hole Nos.5 and 7, was vertically 120 feet; there was no formation of benches on the date of his taking charge; during the period of the contract, when mining activity was carried out by the plaintiff, he did not issue any instructions or directions in writing stating that the plaintiff had not carried out mining work in a scientific manner; under the Regulations, if any mining activity is carried out unscientifically, the foreman or the person in-charge of the mine should issue instructions to stop mining immediately; there were heavy rains on the intervening night of 2/3.08.1993; and, on account of heavy rains, there was a landslide at the mine site leading to flooding of the pits with mud and water. D.W-2, in his evidence, stated that, on the intervening night of 2/3.9.1993, the mine at BH5 collapsed on account of heavy rains resulting in a landslide in the mine; and the plaintiff had also informed about the landslide, through telex as well as the letter in Ex.A-36 and A-38, within 72 hours after its collapse.

On their own admission, the plaintiff had extracted nearly 2800 metric tonnes of manganese ore before 31.07.1993 i.e. before the mine at bore-hole No.5 collapsed on the intervening night of 02/03.08.1993. None of the aforesaid letters addressed

by the plaintiff to the defendant-Corporation refer to their having formed safety benches as stipulated in Regulation 106. The order of the Director of Mines Safety, in Ex.A-42 dated 30.08.1993, notes that mining operations were being done by cutting the ore at the bottom without proper benches being made, and without the sides being adequately sloped. The contention that the plaintiff did not form proper safety benches, and instead continued to extract manganese ore from the sides and the bottom of the mine, is not without justification.

It cannot, however, be lost sight of that, even before the plaintiff submitted their tender, mining activity was being carried on in the collapsed mine as is evident from the plaintiff's letter in Ex.A-2 dated 20.08.1992 which refers to the existence of deep trenches with vertical slopes upto a height of 60 to 70 feet without any benches. The plaintiff's letter in Ex.A-55 dated 06.12.1993 also refers to the complaint lodged by the defendant-Corporation with the police, even prior to submission of the tender by the plaintiff, complaining of illegal mining being carried on in the subject mine. Even before the mine collapsed the plaintiff had, in their letter in Ex.A-22 dated 28.07.1993, referred to the haphazard manner in which mining was carried on earlier, and the illegal mining which took place in the mines. They also addressed letters, in Ex.A-43 dated 07.09.1993 and Ex.A-23 dated 04.10.1993, stating that prohibitory orders were imposed because of the past workings of the mine in a haphazard manner. Even the letter in Ex.A-44 dated 05.10.1993 does not blame the plaintiff for collapse of the mine on the intervening night of 02/03.08.1993. It is only by their letter in Ex.A54 dated 22.11.1993, whereby the contract was terminated with effect from 04.12.1993, did the defendant-Corporation, for the first time, blame the plaintiff for collapse of the mine, and for the resultant prohibitory orders issued by the Director of Mines Safety under Section 22(3) of the Mines Act.

DW.1, in his evidence, has referred to the illegal mining in bore-hole Nos.5 and 7, and non-formation of safety benches before the contract was awarded to the plaintiff. He also admitted that he had not issued any instructions in writing to the plaintiff regarding their failure to carry on mining work in a scientific and systematic manner. The evidence of D.W-1 shows that there were heavy rains on the intervening night of 02/03.08.1993 which resulted in a landslide leading to the flooding of the mine pit with mud and water. While the plaintiff does not appear to have formed the safety benches, as required under Regulation 106, the overwhelming evidence on record shows that collapse of the mine was on account

of heavy rains which resulted in flooding of the mine. The prohibitory order in Ex.A-42 dated 30.08.1993, which refers to the failure to form proper benches and that the sides had not been adequately sloped, does not distinguish the condition of the mine before the plaintiff was awarded the contract and thereafter. It cannot, therefore, be said with certainty that collapse of the mine on the intervening night of 02/03.08.1993 was on account of the failure of the plaintiff to adhere to Regulation 106 by forming proper safety benches and providing adequate slopes.

POINT NO.2:

Sri Y. Chandrasekhar, Learned Counsel for the defendant-Corporation, would submit that the contractor is liable to pay, in case of production during the gestation period, for the actuals; clause 3.0 to 3.4, which deal with consideration, should be read conjunctively and not disjunctively; the plaintiff produced 577 metric tonnes during the gestation period; and the trial Court erred in granting a decree for the entire 1546 metric tonnes of ore which included the 577 metric tonnes produced during the gestation period. On the other hand Sri V.L.N.G.K.Murthy, Learned Counsel appearing on behalf of the plaintiff, would submit that, as the manganese ore produced during the gestation period of three months was not transported from the mine, the plaintiff was not obligated to pay any consideration during the gestation period.

Clause 3, of Ex.A-10 agreement dated 05.12.1992, relates to consideration. Clause 3.1 stipulates that, during the first year, the contractor shall pay minimum consideration of Rs.17,500/- per month to the Corporation on a minimum quantity of 500 metric tonnes of ore at Rs.35/- per metric tonne before the 5th of every month or before lifting/transporting the material whichever is earlier. Clause 3.2 stipulates that the contractor is entitled for a gestation period of three months from the date of commencement of the contract, and would not be liable to pay minimum consideration during the initial three months gestation period; however, in the event of production of ore and transportation thereof during the gestation period, the contractor should pay consideration for the actual quantity proposed to be despatched. Clause 3.3 stipulates that the contractor shall pay consideration in advance for the quantity proposed to be lifted or transported over and above the

minimum quantities of ROM for which payment of consideration had already been effected by him. Clause 3.4 stipulates that, during the second year, the contractor should pay minimum consideration of Rs.20,000/- per month to the Corporation on a minimum quantity of 500 metric tonnes of ore at Rs.40/- per metric tonne before the 5th of every month or before lifting/transporting the material whichever was earlier.

By their letter in Ex.A-13 dated 30.07.1993, the defendant-Corporation called upon the plaintiff to pay Rs.20,200.25 towards 577.15 metric tonnes of ore produced by them during the three month gestation period from 16.12.1992 to 15.03.1993. By their letter in Ex.A-14 dated 13.08.1993, the plaintiff informed the defendant-Corporation that, in terms of clause 3.2 of Ex.A-10 agreement, consideration was payable, during the gestation period, only on transportation of the ore from the mines; and, since they had not transported any material from the mines during the gestation period, they were not liable to pay consideration during the gestation period of three months.

As stipulated in clause 3.2 of Ex.A-10 agreement, the plaintiff was not liable to pay minimum consideration during the gestation period of three months which otherwise, in terms of clause 3.1, they would have been liable to pay. Clause 3.2, however, required the plaintiff, in the event of production of ore and its transportation during the gestation period, to pay consideration for the actual quantity proposed to be despatched. It is only if the twin conditions, of production of ore and its transportation, were fulfilled during the gestation period did clause 3.2 fasten liability on the plaintiff to pay consideration at Rs.35/- per metric tonne for the actual quantity proposed to be despatched.

Mere production of ore did not suffice, and it is only if the produced manganese ore had been transported during the gestation period of three months, would the question of payment of minimum consideration have arisen. Clause 5 of Ex.A-10 agreement dated 05.12.1992 required the contractor to pay royalty and other additional levies, if any, on payment of which an obligation was cast on the defendant-corporation to arrange permits for transportation of material. It is only if permits were arranged by the defendant-Corporation could the produced manganese ore have been transported outside the mine. The emphasis, under clause 3.2 of Ex.A-10 agreement dated 05.12.1992, is both on production and transportation of ore, and mere production of ore did not require payment of

minimum consideration during the gestation period. It is only if the produced ore was transported outside the mine, after payment of royalty and on permits being arranged by the Corporation, was the contractor required to pay minimum consideration before despatch of the ore outside the mine.

POINT NO.3:

Sri V.L.N.G.K. Murthy, Learned Counsel appearing on behalf of the plaintiff, would submit that the Corporation did not make available a mines manager, a mines mate and a foreman; even assuming that DW1 could have discharged the functions of a mines manager for a brief period, the obligation to supply the three personnel was not satisfied; it is not the case of the Corporation that DW 1 was competent to perform the functions of all the three; the plaintiff made several requests for plans from the time of submission of their offer itself; and it is not the plaintiff, but the Corporation which had committed breach of the agreement by their failure to provide the statutorily prescribed mining plans and mining staff.

On the other hand Sri Y. Chandrasekhar, Learned Counsel for the defendant-Corporation, would submit that D.W-1, in his evidence, stated that, apart from being the project manager, he was a qualified mine-mate and a foreman; mining plans were made available to the plaintiff at the project site; their contention that mining plans and mining personnel were not provided is false; in terms of Clause 1.3 of Ex.A.10 agreement the mines manager, foreman and the mine-mate are deputed in the interest of the Corporation which is the owner of the mine; as it was an open cast mine, the Corporation had deputed Mr.Venkat Rao, who is a Foreman, to be stationed at the mine site; he also acted as a mine mate; in so far as a mines manager is concerned, Mr. Venkat Rao was appointed as a permit manager, as approved by the Director of Mines Safety, from 23rd July to 23rd September, 1993; on the date of the incident, Mr. Venkat Rao was acting as a permit manager; the plaintiff did not suffer any prejudice in this regard; while awarding the contract the Corporation had provided the entire information, in Annexure – II, with regard to the manganese ore project at Baguvalasa at a glance; the plaintiff admitted, in Ex.A.55, that LV section plan was furnished; a mining plan was, in fact, furnished; the plaintiff was also informed that it was open for them to approach the mining office, at the mine site, for perusal of the mining plan; the alleged non-supply of plans by the corporation pertains to the rectification works and new areas; the work was stopped

by the plaintiff, not on the ground that plans were not supplied, but on their claim of force majeure conditions; and there was, therefore, no breach of the contract on the part of the defendant-Corporation.

Regulation 2 (16) of the Regulations defines “mines manager” to mean a person possessing the prescribed qualifications and appointed in writing, by the owner or agent, to be in-charge of a mine under the Act, and to include a mine superintendent if appointed under Section 17 of the Act. Regulation 2(19) defines “mine foreman” to mean a person possessing a manager’s or foreman’s certificate and appointed by the manager to perform the duties of supervision or control in a mine or part thereof. Regulation 2(20) defines “mining mate” to mean a person possessing a manager’s, foreman’s or mate’s certificate, and appointed by the manager in writing, under any designation whatsoever, to perform the duties of a mining mate.

Regulation 12(1) stipulates that certificates should be granted by the Board of Mining Examinations. Among the certificates specified in Regulation 12(2) are (a) the Manager’s first class certificate of competency to manage a metalliferous mine; (b) Manager’s second class certificate of competency to manage a metalliferous mine; (d) Mine Foreman’s certificate of competency to carry out inspection and duties as required under the Regulations; (e) Mining Mate’s certificate of competency to carry out inspection and duties as required under the Regulations etc. Regulation 16 prescribes the practical experience of candidates for the manager’s examination. Regulation 18 prescribes the practical experience of candidates for the mate’s examination and, thereunder, no person shall be admitted as a candidate at any examination for a mate’s certificate unless the Board is satisfied that he has had practical experience and training in a metalliferous mine for a period not less than three years. Under proviso (a) thereto, the said period shall be reduced to two years in the case of a candidate who has received a diploma or certificate in mining subjects, or other equivalent qualification after a course of at least two years duration.

Regulation 34 (1)(a) stipulates that no mine shall be opened, worked or re-opened unless there is a qualified manager of the mine. Regulation 34(7)(a) stipulates that where, by reason of absence or for any other reason, the manager is unable to exercise daily personal supervision or is unable to perform his duties, the

owner, shall authorize in writing a person whom he considers competent to act as manager of the mine. Under proviso (i) thereto, such person should hold a manager's or foreman's certificate; and (ii) no such authorisation shall have effect for a period in excess of 30 days, except with the previous consent in writing of the Chief Inspector, and subject to such conditions as he may specify therein.

Regulation 44, 46 and 47 prescribe the duties and responsibilities of managers, mine foremen and mining mate respectively. Regulation 116(1) stipulates that every place in a mine whether below ground or in open cast working, including travelling roadways and landings where work is carried on or where persons are stationed or are required to pass, shall be placed under the charge of a mining mate. Regulation 47 stipulates that every mining mate, appointed under Regulation 116, shall strictly observe the provisions prescribed therein which includes to have responsible charge and control of the district of the mine assigned to him by the manager; to take reasonable means to ensure the proper observance of the requirements of the Act, the Regulations and the orders made thereunder by persons under his charge; and to ensure that no inexperienced person is employed on any work except under the supervision of an experienced person.

Chapter-V of the Rules relates to environment. Rule 31 relates to protection of environment and, thereunder, every holder of a mining lease shall take all possible precautions for the protection of environment and control of pollution while conducting metallurgical operations in the area. The said Chapter prescribes various restrictions. Clause 1.3 of Ex.A-10 agreement stipulates that a mines manager, foreman, mine mate would be provided by the defendant-Corporation at its cost.

In his evidence D.W-1 stated that, at the relevant time, he was working in the capacity as a permit manager in Baguvalasa manganese mines; his basic qualification was a mine foreman certificate; and he was entitled to be appointed as a mine mate/foreman/permit manager. In cross-examination D.W.1 stated that, while he was a qualified mine certificate holder, he had not filed any certificate to that effect; while a foreman certificate is sufficient to act as a manager, he did not hold any certificate to act as a manager of the mines; he did not have the basic qualifications of a field man; he passed the examination, and got the foreman

certificate in the year 1973; he did not have higher qualifications, except practical knowledge; he had appeared for the post of permit manager, but had failed in the examination; he worked as a permit manager for a period of 2 years at Baguvalasa mines; he signed Exs.X-40, X-41 and Ex.A-26 as the general foreman as, during the relevant time, a regular manager was not posted; he was posted in Baguvalasa in November, 1992 as a foreman; and prior to his posting thereat he never worked in manganese mines.

While it is contended, on behalf of the defendant-Corporation, that Sri Venkata Rao was a foreman, he acted as a mine-mate and was appointed as a permit manager from 23.07.1993 to 23.09.1993, it is not in dispute that, prior to 23.07.1993, Sri Venkata Rao was not even appointed as a permit manager. The statutory requirement of the Regulations is to provide three different personnel. Even according to the defendant-Corporation, Sri Venkata Rao held all the three posts, and no one else held office as a mines-mate or a mines manager from the date of commencement of the contract on 16.12.1992 till the contract was terminated by proceedings in Ex.A-54 dated 22.11.1993 with effect from 04.12.1993.

Not only the regulations, but Ex.A-10 agreement also required the defendant-Corporation to provide a mines manager, a foreman and a mines-mate to ensure that mining operations were carried on in a scientific and systematic manner. Having failed to discharge their statutory and contractual obligations in this regard, the defendant-Corporation cannot now be heard to contend that no prejudice has been caused to the plaintiff on their failure to provide these personnel as they were required to be provided only to protect the interest of the Corporation. The salutary object of the Regulations and the Rules is to ensure proper working of the mine and to minimise environmental degradation. These objects are not just to protect the interest of the owner of the mine (the defendant-Corporation), but also those who are involved in mining operations including the plaintiff and the workmen employed by them in the mine etc, and the larger public interest of protecting the environment. The plea of absence of prejudice does not, therefore, merit acceptance.

Chapter-VI of the Regulations deal with plans and sections. Regulation 60 (1) stipulates that every plan or section prepared or submitted, in accordance with the Regulations, should contain the particulars mentioned therein. Regulation 60(4) stipulates that the plans and sections, required under the Regulations, should be maintained upto date, in open-cast workings, within 12 months. Regulation 60(5)

stipulates that plans and sections, required to be maintained under the Regulations, should be kept available for inspection in the office at the mine. Regulation 61 relates to the types of plans and sections and, under clause (1) thereof, the owner, agent or manager of every mine is required to keep (a) a surface plan and (b) an underground plan containing a surface plan specified therein. Regulation 61(1)(c) requires a transverse section or sections of the workings, through the shaft or shafts and main adits, to be maintained indicating clearly the surface and the dips therein. Regulation 61(1)(d) requires a vertical mine section or sections to be maintained. Regulation 61(1)(g) stipulates that a geological plan of the area of leasehold, on a suitable scale specified or approved by the Chief Inspector by a general or special order in writing, should be maintained.

Clause 1.2 of Ex.A-10 agreement required the Corporation to prepare and submit a mining plan under the Rules. Rule 3(o) of the Rules defines 'mining plan' to mean a mining plan prepared under Section 5 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter called the "1957 Act") and the rules made thereunder. Chapter-III of the Rules relates to mining operations. Rule 9 relates to mining plans and, under sub-rule (1) thereof, no person shall commence mining operations in any area except in accordance with a mining plan approved under Section 5(2)(b) of the 1957 Act. Rule 13(1) requires every holder of a mining lease to carry out mining operations in accordance with approved mining plans. Rule 13(2) stipulates that if mining operations are not carried out in accordance with the mining plan, the Regional Controller or the authorized officer may order suspension of all, or any of, the mining operations and permit continuance of only such operations as may be necessary to restore the conditions in the mine as envisaged under the said mining plan. Rule 14 stipulates that the prospecting and mining operations shall be carried out in such a manner so as to ensure systematic development of mineral deposits, conservation of minerals and protection of the environment.

Rule 27(1) of the Rules requires every plan or section prepared or submitted, in accordance with the provisions of these rules, to contain the particulars prescribed therein. Rule 28(1) requires the owner, agent, mining engineer or manager of every mine to keep the following plans and sections – (a) a surface plan showing every surface feature within the mining lease boundaries; (b) a surface geological plan of the area of lease hold, on a scale specified or approved by the Controller General by a general or special order in writing showing the particulars specified therein; (c) a

transverse section or sections of the workings through the shaft or shafts and main adits indicating clearly the strike and dip of the vein, lode, reef, or mineral bed or deposit at different points and such sections of the strata sunk or driven through in the mine or proved by boring, as may be available; (d) a longitudinal mine section or sections showing a vertical projection of the mine workings including outlines of all sloped out areas where a reef, vein, lode or mineral bed/deposit or part thereof has a dip exceeding thirty degrees from the horizontal plane.

Rule 28(3) of the Rules stipulates that, where different reefs, lodes, veins or mineral beds or deposits overlie or run parallel to one another, the workings of each reef, lode, vein or mineral bed or deposit shall be shown on a separate plan. Rule 28(5) requires the owner, agent, mining engineer or manager of every mine to keep (a) a key plan incorporating the particulars mentioned therein; (b) an environment plan of the area of mining lease incorporating the particulars mentioned therein.

The defendant-Corporation was required to prepare and furnish mining plans, in terms of the Regulations, the Rules and Clause 1.2 of Ex.A-10 agreement dated 05.12.1992, to the plaintiff. While submitting their tender the plaintiff, in Ex.A-2 letter dated 20.08.1992, requested the defendant-Corporation to provide approved mining plans and working plans necessary for carrying out mining work. Thereafter, by their letters in Ex.A-66 letter dated 03.05.1993, Ex.A-22 dated 28.07.1993, Ex.A-23 dated 04.10.1993, Ex.A-35 dated 29.10.1993 and Ex.A-53 dated 19.11.1993 the plaintiff requested the defendant-corporation to provide them working and mining plans. The letter addressed by the plaintiff in Ex.A-55 dated 06.12.1993, (after termination of the contract) also refers to the failure of the defendant-Corporation to furnish relevant plans and sections.

The requirement to provide mining plans and sections to the plaintiff is also admitted by DW.1 in his evidence. The submission, urged on behalf of the defendant-Corporation, that the mining plans were furnished to the plaintiff is not supported by any evidence on record. The mining plans, referred to in Regulations 60 and 65 and Rule 13, are in addition to those in Annexure II of Exhibit A-1 tender notice. The obligation cast on the defendant-corporation was to supply mining and working plans to the plaintiff, and not merely to ask them to peruse them at their mining office. In his evidence D.W-2 admitted that, as per Ex.A-10 contract agreement, the Corporation had to provide mining and working plans to the plaintiff. It is also evident from Ex.A-44 letter dated 05.10.1993 that the defendant-Corporation had merely

sent five copies of the plans and sections to Mr.Venkata Rao. Even these plans were not furnished to the plaintiff as is evident from the defendant-Corporation's letter in Ex.A46 dated 12.10.1993 directing Sri Venkata Rao to withhold the plans and sections, since the plaintiff had changed the priority of developmental work from bore-hole No.5 to bore-hole No.7 or 11. The mining plans, which the defendant-corporation was required to furnish to the plaintiff, are not those which pertain to rectification works and new areas, but to those areas where they were carrying on mining operations. While the plaintiff may well have extracted nearly 2800 metric tonnes of ore prior to July, 1993, they ran the risk of being penalized, under Rule 13(2) of the Rules, for having undertaken mining operations without approved mining plans, and the possibility of their mining operations being suspended. Having failed to discharge their statutory and contractual obligations of preparing mining plans, and furnishing them to the plaintiff, the defendant cannot be heard to contend that the plaintiff did not suffer prejudice thereby. While the plaintiff, no doubt, stopped working the mine from 11.10.1993, on a force majeure condition of prohibition of employment of contract labour, the defendant-corporation cannot but be faulted for their failure to furnish mining plans.

POINT NOS.4, 5 AND 6:

Sri V.L.N.G.K. Murthy, Learned Counsel appearing on behalf of the plaintiff, would submit that, in the present case, the contract does not specify the order in which reciprocal obligations have to be performed; however by the very nature of things and as a matter of construction of the contract, unless the corporation supplied the plans and the men, the plaintiff could not have been expected to perform their part of the contract to pay minimum consideration; it is the natural sequential order of performance, even in the absence of statutory regulations; in **Nune Sivayya v. Maddu Ranganayakulu** even though the plea, with regard to the order of performance of the obligations, was not taken in the trial court, the Privy Council held that, unless the purchaser applied for delivery first, he could not insist upon the performance by the seller of his obligation to supply; a parallel could be drawn therefrom to Section 54 of the Indian Contract Act 1872; the only ground on which the plaintiff can be refused to be heard, on the question of the order of

performance of reciprocal obligations, is waiver; while the plaintiff had specifically pleaded, in the plaint, the factual matrix for arguing the question of the order of performance of reciprocal obligations, the factual foundation for the plea of waiver is absent in the written statement filed by the Corporation wherein they insisted that the contractual and statutory obligation had, in fact, been complied with; in the face of such a categorical stand in the written statement, the question of waiver does not arise; there cannot be a plea of waiver of a statutory requirement under the Regulations; the performed part of the contract involved violation of the Regulations in that the plaintiff had conducted mining operations without mining personnel and mining plans; the plaintiff cannot be refused relief in respect of the ore excavated by them unless they are equally guilty; "in pari delicto" principle requires that both parties must be equally guilty of violation of the law; violation by the plaintiff is as a result of the failure of the Corporation to perform its statutory obligations; as the Corporation is the author of the illegality, the plaintiff cannot be denied the relief in respect of the excavated ore; if the Court comes to the conclusion that the notice of termination issued by the corporation is bad in law, the notice of termination amounts to repudiation giving rise to an option to the plaintiff; and if they choose to accept the repudiation, there need not be any formal communication of such acceptance; the notice of termination, issued by the Corporation, is not in the exercise of any statutory power and does not amount to an order - administrative or quasi judicial; and, as it is within the realm of private law, no declaration need be sought for the termination letter to be declared illegal.

On the other hand Sri Y. Chandrasekhar, Learned Counsel for the defendant-Corporation, would submit that there is no plea in the plaint with regards reciprocity in the contract and there is no proof thereof in the evidence; in the present case performance by the parties is simultaneous, and there are no reciprocal promises; the plaintiff, without any demur, proceeded with the contract from the date of the agreement till 31.07.1993; they filed a suit for damages without suing for specific performance of the agreement seeking enforcement of a specific reciprocal promise, though the contract period had not expired; the plaintiff failed to plead and prove that they had performed or were ready and willing to perform the promise they had made; in the present case, no order of reciprocity is incorporated in the contract; the plaintiff never put the agreement to an end for the purpose of claiming damages; the contention, that the plaintiff had elected to accept termination of the contract as having been put to an end and had hence sued for damages, is not tenable; the

contract between the parties does not provide that performance of one portion is dependant upon the performance of the other; as the plaintiff kept the contract alive, till the Corporation terminated the contract, they cannot contend that Section 54 of the Indian Contract Act is attracted; the plaintiff's claim is barred by estoppel; and the plaintiff is not entitled to contend that termination is illegal, without seeking a declaration that termination of the contract is illegal, before seeking damages.

It is for the first time before this Court, that too during the course of hearing of these two appeals, has the contention, regarding reciprocity of promises under Section 51, 52 and 54 of the Contract Act, been raised. Neither has such a plea been taken in the plaint, nor has any evidence been adduced in this regard. Such a contention was not even raised before the Court below during the course of hearing of the Suit. While the defendant was no doubt required, both statutorily and contractually, to provide mining personnel and mining plans to the plaintiff, it is not the plaintiff's case that, since the defendant failed to discharge their obligations in this regard, they were not required to comply with their obligations under the contract. The case of the plaintiff, in short, is that the force majeure events firstly of heavy rains resulting in collapse of the mine on the intervening night of 2nd and 3rd August, 1993 and secondly the prohibition of employment of contract labour in manganese mines, absolved them of their contractual obligation of paying minimum consideration. There is no whisper, even in the several letters addressed by the plaintiff to the defendant, that they did not discharge their contractual obligations only because the defendant had failed to discharge their duties under the contract. The defendant can be faulted for not pleading waiver in their written statement only if the plaintiff had raised the plea of reciprocity, attracting Sections 51, 52 and 54 of the Contract Act, in their plaint.

Reliance placed on **Nune Sivayya**¹, in support of the submission that such a contention can be urged for the first time during the course of hearing of these appeals, is misplaced. Section 93 of the Indian Contract Act (Act IX of 1872), as it then stood, provided that, in the absence of a special promise, the seller of the goods was not bound to deliver them until the buyer applied for delivery. This provision, among others, was subsequently repealed by the Sale of Goods Act (Act III of 1930), and was inserted in Section 35 thereof which provided that, apart from any express contract, the seller of the goods was not bound to deliver them until the

buyer applied for delivery. The words '*in the absence of any special promise*' in Section 93 of Act IX of 1872 as it then stood was substituted by the words "*apart from any express contract*" in Section 35 of the Sale of Goods Act, 1930.

In **Nune Sivayya**¹ the Privy Council held that, looking at the evidence as a whole, it was neither proved as a term of the contracts, nor was it a necessary implication from the nature of the contracts, that the buyer was to do nothing until he received an intimation from the seller of the arrival of the goods from the mills; if that be the right view, then there was no special promise such as would exempt the buyer from his obligation; when the buyer applied for delivery, it would be a question depending on the nature and circumstances of the particular contract as to the time within which the seller is bound to comply with the buyer's demand; an obligation on the seller to inform the buyer, when the goods are in a deliverable state, is not a special promise within the meaning of [Section 93](#), though it may postpone the obligation of the buyer to apply for delivery; on the lapse of a reasonable time to enable the goods to be procured by the seller from the mills, the buyer would be entitled and bound to apply for delivery; and the appellants were entitled to treat the respondents letter as a wrongful repudiation of the five contracts, to rescind the contract, and to recover damages from the respondents.

In **Nune Sivayya**¹, the Privy Council examined the question which arose for consideration before the trial Court. No declaration of law that such a plea could be raised for the first time before it, even if it had not been raised in the Suits, is to be found in the said judgment. While the submission of reciprocal promises, absolving the plaintiff from fulfilling their promise as the defendant had failed to fulfil theirs, is no doubt attractive, it would wholly inappropriate for this Court to examine this contention urged for the first time during the course of hearing of these appeals.

The defendant's failure to provide mining personnel and mining plans is undoubtedly a breach of the contractual terms. The plaintiff ought not to have extracted ore from the subject mines till 31.07.1993, in the absence of the statutorily prescribed mining plans and mining personnel. While such extraction may be contrary to law, it cannot be equated to the defendant's failure to discharge their statutory obligations to provide mining personnel and mining plans. In **Mohd. Salimuddin v. Misri Lal**, the Supreme Court held that one cannot conceive of a greater judicial sin than the sin of treating the 'oppressor' and the 'oppressed' on par

or that of rewarding the oppressor, and punishing the oppressed, whilst administering the law designed to protect the oppressed; the doctrine of pari-delicto is not designed to reward the 'wrong-doer', or to penalize the 'wronged', by denying to the victim of exploitation access to justice; the doctrine is attracted only when none of the parties is a victim of such exploitation and both parties have voluntarily, and by their free will, joined hands to flout the law for their mutual gain; and the said doctrine, embodying the rule that a party to a transaction prohibited by law cannot enforce his claim in a Court of law, is not attracted otherwise.

The spirit behind the rule of oppression is recognised as an exception to the doctrine that a party cannot recover what he has given to the other party under an illegal contract. 'It can never be predicted as pari delicto where one holds the rod and the other bows to it'. Cases which call for appropriate relief to be given to an innocent party, where 'one has the power to dictate and the other has no alternative but to submit, are not uncommon. (**Smith v. Cuff**; **V.S. Rahi v. Smt. Ram Chambeli**; **Mohd. Salimuddin**²). There is, therefore, no merit in the submission, urged on behalf of the defendant-corporation, that, since the plaintiff had excavated manganese ore till 31.07.1993, they are estopped from questioning the defendant's failure to provide mining personnel and mining plans.

The submission that, without seeking a declaration that the termination of the contract by the defendant-Corporation is illegal, the plaintiff cannot claim damages is not tenable. In **State of A.P. v. M/s. Vijaya Lakshmi Minerals Trading Company**, on which reliance is placed on behalf of the defendant-Corporation, a Division bench of this Court held that, unless a declaration is sought that termination of the sub-lease agreement is illegal and contrary to the provisions of the Act and the rules made thereunder, the plaintiff cannot claim damages for such cancellation. A decision rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority' is not a binding precedent. (**Lancaster Motor Company (London) Ltd. v. Bremith Ltd**). A decision, which is neither founded on reasons nor it proceeds on a consideration of an issue, cannot be deemed to be a law declared to have a binding effect. A decision is binding not because of its conclusion but in regard to its ratio, and the principles laid down therein'. Any declaration or conclusion, preceded without any reason, cannot be

deemed to be the declaration of law or authority of a general nature binding as a precedent. (**Jaisri Sahu v. Rajdewan Dubey; Municipal Corporation of Delhi v. Gurnam Kaur; B. Shama Rao v. Union Territory of Pondicherry; State of U.P. v. Synthetics and Chemicals**). Uniformity and consistency are undoubtedly the core of judicial discipline. But that which escapes in the judgment, without any occasion, is not the *ratio decidendi*. (**Synthetics and Chemicals**¹⁰; **Gurnam Kaur**⁸).

In **Keshavlal Laxmandas Patel v. Narsinhbhai Kalidas Patel**, the Gujarat High Court held that [Section 34](#) of the Specific Relief Act postulates that only that person can avail of the remedy of obtaining a decree for declaration who is entitled to "any legal character" or who has any right as to any property; and "in case of an agreement to sell, parties to the agreement are not entitled to a "legal character" nor can it be said that a person, who has agreed to purchase has got "any right to any property" for the simple reason that a mere agreement to sell, does not create any interest or any right in the property agreed to be purchased. A right to adjudicate upon an issue, relating to a breach of the conditions of the contract, would flow from, or is inherent in, the right conferred to assess the damages arising from a breach of the conditions. (**State of Karnataka v. Shree Rameshwara Rice Mills**. The letter in Ex.A-54 dated 22.11.1993, terminating the contract with effect from 04.12.1993, was issued in the exercise of a contractual power. As the plaintiff was not claiming any right of a legal character, they were not disentitled from claiming damages merely because they did not seek a declaration that termination of the contract was illegal.

Section 39 of the Contract Act stipulates that, when a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance. Where a party has repudiated a contract, the aggrieved party can elect to accept the repudiation or to affirm the contract. An act of acceptance of a repudiation requires no particular form. It is sufficient that the communication or conduct clearly and unequivocally conveys to the repudiating party that that aggrieved party is treating the contract as at an end, and the fact of the election comes to the repudiating party's attention. (**Vitol SA v. Norelf Ltd.**). As termination of the contract by the defendant's letter in Ex.A-54 dated 22.11.1993, for failure of the plaintiff to pay minimum consideration of Rs.70,000/-, is illegal, and, as shall be detailed hereinafter, the plaintiff is liable to pay minimum consideration of only Rs.41,209.68, the notice of termination amounts to a

repudiation giving the plaintiff the choice of either accepting the repudiation and terminating the contract or to ignore the repudiation. The plaintiff was justified in accepting the repudiation, and in filing a suit for damages.

POINT NO.7:

Sri V.L.N.G.K. Murthy, Learned Counsel appearing on behalf of the plaintiff, would submit that the plaintiff had requested the defendant-Corporation to permit them to work in new areas for mining the ore; they were restricted to removal of the existing over-burden in bore-hole No.5; and they were not permitted to carry on mining operations in new areas. On the other hand Sri Y. Chandrasekhar, Learned Counsel for the defendant-Corporation, would submit that, by Ex.A-1 dated 06.04.1990, the plaintiff was informed that the entire area of 115 acres was available for systematic development of the mine for winning the mineral; while the Plaintiff was entitled to develop the entire Ac.115.00 under the Contract, they had agreed to pay minimum consideration of Rs.17,500/- per month; the Corporation was due minimum consideration from the plaintiff from August, 1993 till termination of the contract; the Corporation had only indicated bore-hole No.5 & 7, as it was referred to in the geological information in Annexure-II of Ex.A1; at no point of time did the Corporation impose any restrictions on the Plaintiff in carrying on mining operations at the place of their choice; and at no point of time was the plaintiff asked to develop the entire area of Acs.115.00.

In his evidence DW.1 stated that the area of the land, leased out under Ex.A-10 to the plaintiff for carrying out mining activities, was 115 acres; and the Corporation had asked the plaintiff to carry out development activity at bore-hole No.7, and not to carry on mining activity for extraction of ore. In his evidence DW.2 stated that, after execution of the contract agreement under Ex.A-10, the plaintiff was asked to carry out mining operations in bore-hole Nos.5 and 7 only which were old pits. However, none of the letters exchanged between the parties show that the defendant-corporation had prohibited the plaintiff from developing any part of the area of 115 acres allotted to them for mining purposes. Under Ex.A-10 agreement dated 05.12.1992, the plaintiff was exempted from paying minimum consideration during the three month gestation period (i.e., 16.12.2012 to 15.03.2013), to enable them to carry on development activities. The plaintiff did not carry out any development work during this period, and instead extracted 577 metric tones of ore from the existing bore holes. It is for the first time, by letter in Ex.A-66 dated 03.05.1993, that the

plaintiff informed the defendant-corporation that they were permitted to mine only in the old pits at bore hold No.5 which was in a dangerous condition. By their letter in Ex.A-37 letter dated 12.08.1993, and Ex.A-38 telegram dated 13.08.1993, the plaintiff informed the corporation that it was necessary to develop new areas, for getting production, since working near bore-hole No.5 was dangerous. Again, by their letter in Ex.A-40 dated 16.08.1993, the plaintiff informed the defendant that three to four months time was required for developing new areas of exploratory nature for development and production of manganese ore.

By Ex.A-43 letter dated 07.09.1993, the plaintiff informed the Corporation that they had to carry out only development work in the mine as per the orders of the Director of Mines Safety dated 30.08.1993, and thereby they did not have any area left out to carry on mining operations for production of ore. Even this letter does not blame the Corporation for the plaintiff's failure to conduct mining operations in new areas. Even after the contract was terminated w.e.f. 04.12.1993, the plaintiff, in their letter in Ex.A-55 dated 06.12.1993, merely stated that it was not their responsibility to develop the entire 115 acres of the mine area which was haphazardly worked long back.

On the other hand, by Ex.A-41 letter dated 13.08.1993, the Corporation informed the plaintiff that they should suspend all operations at bore-hole No.5; and they may start putting trial pits in bore-hole No.7. By their letter in Ex.A-46 dated 12.10.1993 the defendant-Corporation informed the plaintiff that, as per the reports received by them, the plaintiff had not made much developmental work either in borehole No.7 or near borehole No.5; and, during discussions on 05.10.1993, the plaintiff had informed that they were exploring the possibility of developing near Bore hole No.11 of which there was no mention in their letter dated 10.10.1993. These letters addressed to the plaintiff do not show the defendant-Corporation having prevented them from mining in new areas. From the documentary evidence, referred to hereinabove, it is evident that the defendant-Corporation did not prevent the plaintiff from developing new areas and carrying on mining operations thereat.

POINT NO.8:

Sri Y. Chandrasekhar, Learned Counsel for the defendant-corporation, would submit

that the plaintiff had failed to pay minimum consideration of Rs.17,500/- per month for the four month period from August to November, 1993; and the defendant was justified in invoking Clause 13 of Ex.A-10 agreement, to terminate the contract, as the plaintiff failed to pay minimum consideration. On the other hand Sri V.L.N.G.K. Murthy, Learned Counsel appearing on behalf of the plaintiff, would submit that, in view of the force majeure event of collapse of the mine on the intervening night of 2nd/3rd August, 1993 the plaintiff was not liable, thereafter, to pay minimum consideration; termination of the contract by Ex.A-54 letter dated 22.11.1993, on the ground that the plaintiff had not paid minimum consideration of Rs.70,000/-, is illegal; it is not for the defendant to unilaterally declare that the plaintiff had committed breach of the contract; and clause 13 of Ex.A-10 agreement cannot be understood as prohibiting the plaintiff from questioning the illegal termination of the contract.

By Ex.A-40 letter dated 16.08.1993, the plaintiff requested the defendant-Corporation to waive payment of monthly consideration for three months i.e., August, September, and October, 1993 as no production was expected during these three months in view of the prohibitory orders issued under Section 22(3) of the Mines Act. By Ex.A-43 letter dated 07.09.1993, the plaintiff informed the defendant-Corporation that they should be exempted from paying minimum consideration till prohibitory orders were lifted, and actual mining operations were resumed.

By letter in Ex.B-15 dated 30.10.1993, the General Manager of the defendant-Corporation informed the plaintiff that they had failed to pay consideration for the months of August, September and October, 1993; and they should pay Rs.52,500/- on or before 05.11.1993. By Ex.A-50 letter dated 03.11.1993, the plaintiff informed the Corporation that. since their request for waiver was based on force majeure conditions, they would not be liable to pay consideration from August, 1993 onwards; and, as they had paid consideration till July, 1993, they had not violated Clause 13 of the agreement.

Clause 13 of Ex.A-10 agreement dated 05.12.1992 reads thus:

“The Corporation reserves the right to suspend/interrupt/ terminate the contract at any time due to unsatisfactory performance of the contract like failure to make payments, unscientific quarrying, closing of the mine and in such case the contractor shall not be entitled to claim any compensation/damages from the Corporation. If the Corporation authorities have to terminate the contract on account of violation of any terms and conditions/default/breach of contract the contractor

will be liable for all losses, damages caused due to such termination. The contractor shall comply with all the relevant laws applicable in respect of this contract and shall be solely responsible for such compliance”.

While clause 13 of Ex.A10 agreement empowered the defendant-Corporation to terminate the contract at any time due to unsatisfactory performance of the contract, including failure to make payment, that does not mean that the validity of the action of the defendant-Corporation, in terminating the contract exercising its powers under clause 13 of Ex.A-10 agreement, cannot be scrutinized by Courts. Where there is no dispute between the contracting parties regarding breach of the contractual terms, a party to the contract would be well within his rights in assessing the damages occasioned by the breach, in view of the specific terms of the agreement. However, where a party to a contract disputes the committing of any breach of the conditions, the adjudication should be by an independent person or body and not by the officer who is a party to the contract. (**Shree Rameshwara Rice Mills**¹²). The Corporation cannot, therefore, be heard to contend that exercise of power under clause 13 of Ex.A-10 agreement is unilateral, and cannot be subjected to examination in appropriate legal proceedings.

By their letter in Ex.A-54 dated 22.11.1993, the Corporation informed the plaintiff that, in terms of Clause 13 of the agreement dated 05.12.1992, the plaintiff should pay consideration arrears of Rs.70,000/- within 10 days failing which the contract would stand terminated with effect from 04.12.1993. While failure to pay minimum monthly consideration by the plaintiff did enable the Corporation, under Clause 13 of Ex.A-10 agreement, to terminate the contract, the force majeure event, referred to in Ex.A-50 letter dated 03.11.1993, is the collapse of the mine at borehole No.5 which the plaintiff claimed, in Ex.A-40 letter dated 16.08.1993, to have resulted in their inability to work in a good working area of high grade zone (bore hole No.5); and they were left with a low grade area near bore hole No.7 for production.

The term “force majeure”, in clause 17 of Ex.A-10 agreement, includes “act of God” and stipulates that, upon occurrence of the cause, the party alleging that it has been rendered unable thereby, should notify the other party in writing within 72 hours giving full particulars and satisfactory evidence in support of its claim. As is evident from Ex.A-36 letter dated 04.08.1993, collapse of the mine, because of heavy rains, was intimated within 72 hours by the plaintiff to the defendant-

Corporation. Consequently, while the force majeure condition in clause 17.1 applied, the plaintiff's obligation under the contract, for payment of minimum consideration of Rs.17,500/- per month from 3rd August, 1993, would have been suspended only if the plaintiff had not extracted ore, from the subject mines, thereafter.

Clause 17 of Ex.A-10 agreement dated 05.12.1992 brings regulations of the Government also within the term "force majeure" and, in view of the force majeure event of prohibition of employment of contract labour in manganese mines, both the plaintiff and the defendant- corporation were rendered incapable of fulfilling their obligations under the contract thereafter. Consequently, for the period subsequent to 11.10.1993 when the plaintiff had stopped the work because of the aforesaid force majeure event till the contract was terminated with effect from 04.12.1993, and as the plaintiff did not extract ore from the subject mines thereafter, the defendant corporation is not entitled to claim minimum consideration for this period.

Failure to pay minimum consideration of Rs.17,500/- per month, from August, 1993 till 11.10.1993, would not have amounted to a breach of the terms and conditions of the contract, and would have fallen within the ambit of Clause 17 thereof, only if the plaintiff had not extracted manganese ore from the mines during this period. While the plaintiff, no doubt, claims that the entire quantity of 2798.26 metric tonnes was produced by them before 31.07.1993, Ex.A-26 proceedings dated 20.10.1993 shows production of 259.28 metric tonnes of ore from bore hole No.7, and 209.37 metric tonnes of ore from bore hole No.11. It is evident, from the plaintiff's letter in Ex.A-40 dated 16.08.1993, that the entire production of ore prior to the collapse of the mine on 2/3.08.1993 was from bore hole No.5, and because of its collapse they commenced mining operations thereafter in bore hole Nos.7 and 11. As the plaintiff had excavated manganese ore even after collapse of bore-hole No.5 on the intervening night of 2/3.08.1993, and they voluntarily stopped the work on 11.10.1993 in view of prohibition of employment of contract labour in manganese mines, they cannot claim protection of Clause 17 of Ex.A-10 agreement, and are liable to pay minimum consideration at Rs.17,500/- per month for a period of 2½ months (for the period August, 1993 to 11.10.1993), i.e., Rs.41,209.68. As the defendant-Corporation was entitled only to a minimum consideration of Rs.41,209.68, termination of the contract, exercising power under Clause 13 thereof for non-payment of minimum consideration of Rs.70,000/- (for the four month period

August to November, 1993), is illegal.

POINT NO.9:

Sri Y. Chandrasekhar, Learned Counsel for the defendant-Corporation, would submit that, as the plaintiff had failed to lift the pit-head stock within fifteen days of termination of the agreement on 04.12.1993, it became the property of the Corporation in terms of Clause 10 of Ex.A-10 agreement dated 05.12.1992; and the plaintiff deliberately chose not to pay minimum consideration of Rs.70,000/-,and thereafter lift the pit head stock, as the quality of the pit head stock was extremely poor. On the other hand, Sri V.L.N.G.K. Murthy, Learned Counsel appearing on behalf of the plaintiff, would submit that, despite their repeated requests, the Corporation did not issue transport permits to the plaintiff insisting that they pay minimum consideration; without transport permits being issued, the plaintiff could not transport the pit head stock outside the mine; having directing the plaintiff not to transport the pit head stock, the Corporation is now seeking to shift the blame contending that it is the plaintiff who chose not to transport the pit head stock of manganese ore; though the plaintiff was ready to transport the pit head stock of 1546.60 mt, the Corporation withheld permits on 05.10.1993 and seized the entire pit head stock; they did not demand consideration dues while collecting royalty on 11.10.93 and 20.10.93 and labour cess on 25.10.1993; and the Corporation made a false demand, for payment of consideration from August'93 onwards, only on 28.10.1993 with the intention of terminating the contract.

By Ex.A-44 letter dated 05.10.1993, the defendant-Corporation informed the plaintiff that they were prohibited from transporting material from Baguvalasa mine with immediate effect till such time the workings were made safe as per the plan of action already intimated to them. In reply thereto the plaintiff, by their letter in Ex.A-24 dated 10.10.1993, informed that the material available in the mine was excavated prior to 31.07.1993; they had excavated around 2100 metric tonnes till 31.07.1993, and had already paid consideration for this quantity; they were entitled to transport the entire quantity of material as per their requirement; they had so far lifted around 1200 metric tonnes only, and the balance 900 metric tonnes was lying in the mines; they were ready to pay royalty; and the Corporation should arrange for permits immediately for the balance quantity of 900 metric tonnes. Ex.A-31 dated 11.10.1993 is the receipt which shows that royalty was paid for 810 metric tonnes, and Ex.A-32

dated 20.10.1993 is the receipt showing that royalty was paid for 738 metric tonnes. If only 900 M.T. ore was available to be lifted, it does not stand to reason that the plaintiff should, by Ex.A-31 dated 11.10.1993 and Ex.A-32 dated 20.10.1993, pay royalty for 1548 M.Ts. of ore.

Clause 4, of Annexure III of Ex.A-1 tender notice dated 20.08.1992, stipulated that all statutory payments like royalty etc shall be borne by the contractor at actuals as fixed by the respective authorities; the contractor should also bear additional levies, if any; and the Corporation, on payment of statutory levies by the contractor, should arrange permits from the concerned authorities for transportation of the material. The fact remains that, though they paid royalty in Exs.A-31 and A-32, the plaintiff was not permitted to transport the pit head stock outside the mine. As has been held hereinabove, the liability of the plaintiff, to pay minimum consideration, was limited to the period of two months eleven days from August, 1993 till 11.10.1993 i.e. for Rs.41,209.68 ps. The defendant-Corporation was, therefore, not justified in asking them not to transport the ore till the minimum consideration of Rs.70,000/- i.e., from August to November, 1993 was paid. As the evidence on record does not clearly show that it was the plaintiff who alone was responsible for collapse of the mine on 02/03.08.1993, the defendant-Corporation must be held to have acted illegally in prohibiting the plaintiff from transporting the manganese ore till the workings were made safe. Whatever be the quality of the pit head stock, it is evident that the plaintiff was illegally prohibited from transporting the pit head stock outside the mine by the defendant-Corporation by their failure to issue transport permits.

POINT NO.10:

Sri V.L.N.G.K.Murthy, Learned Counsel appearing on behalf of the plaintiff, would submit that, in string contracts, the measure of damages is based on the contract value of the sub-contract, and not on the market value of the goods; in case the innocent party is not able to perform his obligations under the sub-contract, the guilty party has to pay damages towards loss of profit under the sub-contract, and also indemnify the innocent party against any claims arising out of the breach of the sub-contract; the innocent party's claim is not restricted to the contract on hand by the date of the breach, but extends to future/repeat sales during the period of the contract; the plaintiff had received supply orders from all their customers based on

the second year's supply contract with the defendant-Corporation; all the customers would release repeat orders after completion of the first order already issued; the orders from S.K.Sarwagi, Mid-wet Iron & Steel Co. Ltd, M/s. Nanubala Agencies and M/s Visakhapatnam Steel Plant show the continuous requirement of manganese ore; pre-mining expenses of Rs. 2,04,000/- was incurred by the plaintiff, during the gestation period i.e. from 15.12.1992 to 15.03.1993, towards expenses such as site shed, purchase of tools and gammalas, site development expenses, road formation charges etc; these expenses were required to be incurred for the smooth working for the two year period of production; these expenses are not be added to the excavation cost of the ore; as per method-1, the mining expenses incurred from 16.03.1993 to 30.07.1993 was Rs.4,96,069/- for production of 2798 MT of Ore; hence, the excavation cost is to Rs.177/- per MT; the profits that the plaintiff could have earned during the contractual period of two years, but for the illegal termination, is not remote; the suggestions given to PW 1, regarding the contracts entered into by the plaintiff with third parties for supply of manganese ore, is contrary to the plea taken in the written statement; the plaintiff informed the Corporation of their having secured supply orders from various parties; and, as such, the plaintiff is entitled to be compensated for the loss they had suffered on their inability to supply manganese ore to fulfil their commitment.

On the other hand Sri Y. Chandrasekhar, Learned Counsel for the defendant-Corporation, would submit that the reasons stated by the Plaintiff, for claiming damages, are hypothetical and remote; the plaintiff cannot rely on the Income Tax returns, i.e., Ex.A73 and 74 for the year 1992-93 to prove profits and loss of the contract which commenced only in December, 1992; the plaintiff claimed damages on a notional calculation of the mining operations, which they would have carried on for a period of two years; the primary aspect of winning the mineral itself is not certain; the Corporation had at no point of time, either in the tender or in agreement, assured the plaintiff of the quantity and quality of the mineral; the claim of damages for a mineral, which is not mined, is remote; no damages can be claimed as an ascertained sum for an unwon mineral; the plaintiff has not produced any documents to show that they had orders from parties for the second year; the Plaintiff failed to support their claims by reliable evidence; the Court below erred in placing reliance on Ex.A15 to A19 without the evidence of the so-called customers; the originals of Ex.A15 to A19 were not even summoned; Ex.A17 and A18 were merely a record of discussions and not a concluded contract; Ex.A19 is merely an offer and does not

disclose acceptance; Ex.A15, which purports to be the acceptance of an offer, was not filed in Court; Ex.A16 is also a similar purchase order; even otherwise the said offer is also not filed into Court; the trial Court ignored the fact that the sale price, offered by the purchasers, included royalty of Rs.17/- per M.T. for mineral content of 25% to 32%; and Rs.7/- per M.T. for mineral below 25% as per the Mines and Minerals (Development & Regulation) Act, 1957; there is no consistency in the grades at borehole Nos.5 and 7; consequent upon the collapse of the mine at borehole No.5 on 03.08.1993, the plaintiffs were left with only low grade ore near borehole No.7 and, as such, they stopped working the mines; the ore, (pit head stock) which was mined, was never supplied to the four customers, with whom the plaintiff is alleged to have agreements, as the ore was not of the required quality; the analysis reports, in Ex.A57 to A67, are not public documents and are not properly proved; no witness, who performed such an analysis, was examined; there is no evidence to show that these certificates relate to the ore actually lying at the pit head; in any case the plaintiff, having paid royalty in respect of the ore on the footing that it is low grade ore having manganese content of below 25% (Ex.A-31 and A-32), is estopped from contending that the ore has a manganese content in excess thereof; the cost of production would not remain static during the entire two year period; because of the steep dip of the ore body, the ratio of removal of overburden would increase resulting in increase of the production cost; the plaintiff did not incur any expenditure for development of infrastructure; the evidence of the Plaintiff, and their Chartered Accountant, show that no machinery was utilised; award of damages, under the head "Loss of Investment on Infrastructure and Rectification Works", is whimsical and unjustified; it is not explained as to how the plaintiff was entitled to Rs.4,57,737-11 ps, while his accounts show only an investment of Rs.3,96,688-92 ps; it cannot be legitimately inferred that they could carry on mining operations which would yield 9,000 tonnes in the first year and 9,500 tonnes in the second year when the contract itself contemplated only a yield of 4,500 tonnes for the first year and 6,000 tonnes in the second year; the quality of the ore did not conform to the requirements stipulated by the four parties, with whom the plaintiff claimed to have entered into contracts; neither the pleadings nor the evidence let in by the plaintiff show that they could have continued execution of the contract after 11.10.1993; the contention, that suggestions were not put in a particular manner, is misconceived; the case of the Corporation has been pleaded, and the suggestions reflect the pleadings that the plaintiff is not entitled to damages; and, as the contracts

relied upon by the plaintiff relate only to the first year, and not the second year, no reliance can be placed thereon for the purpose of computing damages.

In the calculation of damages due for breach of a contract, three points which must be determined are first, what were the damages which actually resulted from the breach? This would include loss of profit and also damages which the buyer would have to pay to his sub-buyer; Secondly, was the contract made under any special circumstances and, if so, what?; and thirdly what, at the time of the making of the contract, was the common knowledge of the parties?. The court may reasonably suppose these three points to have been in the contemplation of the parties as the probable result of breach of the contract, assuming the parties to have applied their minds to the contingency of there being such a breach?. (**Re R. & H. Hall., Ltd. and W.H.Pim (Junior) & Co.'s Arbitration; Hadley v. Baxendale; Hammond & Co. v. Bussey**). In order to make the contract-breaker liable, it is not necessary that he should actually have asked himself what loss is liable to result from a breach. At the time of contracting, parties contemplate not the breach of the contract but its performance. It suffices that, if he had considered the question, he would, as a reasonable man, have concluded that the loss in question was liable to result. It is enough if the loss (or some factor without which it would not have occurred) is a "serious possibility" or a "real danger". (**Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd.; Coulson & Co. Ltd. (Third parties); Sally Wertheim v. Chicoutimi Pulp Company**).

The market price, on the date following the breach, is the yardstick by which the buyer's claim for damages is evaluated and quantified. (**Meg'regor on Damages 19th Ed. para 583; Union of India v. M/s.Commercial Metal Corporation**). The amount of money, adjudged to be due to the buyer in this respect, must be assessed as at the time when the contract was broken. The decisive element is the date of breach and the market price prevailing on that date. (**M/s. Commercial Metal Corporation**¹⁹; **Hadley**¹⁵; **Victoria Laundry (Windsor) Ltd.**¹⁷ and **Czarnikow v. Kaufos; Cheshire & Fifoot 'Law of-Contract 9th Ed. p. 590**). With the amount of money, the buyer should be placed in the same financial position as he would have been if the seller had performed his contractual obligations. (**M/s.Commercial Metal Corporation**¹⁹; **Lavarack v. Woods of Colchester; Ogus Law of Damages 1973 Ed. pp. 284-285**).

A contract of sub-sale, which the buyer had entered into, is evidence of the value of the goods to him on the date when delivery should have been made, though the seller had no notice of such a contract. (**Divakaruni Sambasiva Rao v. Kurnala Venkatarao, Tobacco Seed Oil Firm; Halsburys Laws of England, 2nd Edition, Volume 10, (Lord Hailsham) at page 123**). Where there has been failure to deliver goods which are not procurable in the market, and they have been resold by the purchaser previous to the breach of the contract, it often seems as if the question of liability to pay for profits would arise for decision. In reality, however, the re-sale is an immaterial circumstance, except in so far as it may go to prove what the real value was at the time of the breach. Where the re-sale took place in the ordinary course of commerce, it would be reasonable to accept it as a test of the then value of the article. But where it was a special transaction, in which a special price was given, in consequence of the peculiar exigencies of the purchaser, no such inference can be drawn. Therefore, notice of the resale would in the former case be unnecessary, in the latter probably be useless. (**Divakaruni Sambasiva Rao²²; Maynes Treatise on Damages, 10 Edition, by F. Gahan**).

Where the goods, at the time when the contract is made, have been sub-sold or brought for sub-sale the following rules apply i.e., when there is no market (1) where the seller, at the time when he made the contract, knew that the goods had been sub-sold or were brought for sub-sale, or would probably be sub-sold (a) the buyer may buy the best substitute procurable for the goods and, if the sub-buyer accept them, charge the seller the difference in price as general damages or (b) may recover as special damages the loss of his actual or anticipated profits, together with a reasonable indemnity against the buyers liability to the sub-buyer, and costs reasonably incurred. Some evidence of such value is afforded by the sub-sale price or the price of the goods at the market nearest to the place of delivery. (**Benjamin on Sale, 7th Edition; Divakaruni Sambasiva Rao²²**).

The record of discussions in Ex.A-18 dated 16.06.1993 and Ex.A-17 dated 25.07.1993 refer to M/s. S.K. Sarwagi & Company Ltd asking the plaintiff to supply 500 metric tonnes and 1000 metric tonnes respectively. Ex.A-16 letter of Mid-West Iron and Steel Co. Ltd dated 23.06.1993 shows that a purchase order was issued for supply of calibrated RF grade Manganese Ore of 200 metric tonnes. Ex.A-19 letter

dated 28.07.1993 from Nanubala Agencies shows that a purchase order was placed on the plaintiff for supply of 1750 metric tonnes before December, 1994. The defendant-Corporation cannot claim to be unaware of the plaintiff having secured orders from different customers, as the plaintiff had informed them of having secured such orders by their letters in Ex.A-66 dated 03.05.1993, Ex.A-20 dated 12.05.1993, Ex.A-22 dated 28.07.1993, and Ex.A-23 dated 04.10.1993. Except for Ex.A-23 letter dated 04.10.1993, all the three other letters were addressed prior to the collapse of the mine on the intervening night of 02/03.08.1993.

No suggestions were put, during cross-examination of PW.1, regarding the genuineness of the orders placed by the four companies/firms on the plaintiff. It is a well established rule of evidence that a party should put to each of his opponent's witnesses so much of his case as concerns that particular witness. (**Chuni Lal v. Hartford Fire Insurance Company Limited; Malanbee v. Syed Amjad Hussain**). It is essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made. (**Browne v. Dunn; Malanbee**²⁴).

Wherever the opponent has declined to avail himself of the opportunity to put his essential and material case in cross-examination, it must follow that he believed that the testimony given could not be disputed, (**Malanbee**²⁴; **Browne**²⁵; **A.E.G. Carapiet v. A.Y.Derderian**), and the evidence tendered on that issue ought to be accepted. (**Sarwan Singh v. State of Punjab; A.E.G. Carapiet**²⁶; **Traders Syndicate v. Union of India; Malanbee**²⁴). We must, therefore, ignore the contention, urged on behalf of the defendant-Corporation, that these purchase orders are bogus, and proceed on the premise that they are genuine.

On the tests to be applied to determine whether the claim of damages is remote, it is useful to note that, in **Superintending Engineer, N.S. Left Canals, Circle, Tekulapalli, Khammam v. Kehar Singh**, this Court held that the basis of the claim before it was that, had the amount been released in time, the contractor would have been able to undertake five times the value of the work and get 15% of the profit on the out-turn; the amount awarded was, admittedly, not in the nature of interest which had already been awarded but was in addition to it; and it was too remote a claim to be allowed under Section 73 of the Indian Contract Act. In **Koufos**

vs. Czarnikov (The Heron II) the loss of profits, suffered on account of fluctuation in the price of sugar by reason of the delay in shipping, was held not to be remote.

In **Koufos**³⁰, it was held that remoteness of damage in a contract must be determined by applying the rule laid down in **Hadley**¹⁵; in **Re R. AND H. Hall Ltd.**¹⁴ it was held that it was for the Court to decide what was to be supposed to have been in the contemplation of the parties; to make a thing probable, it is enough that there is an even chance of its happening; **Hall's** case¹⁴ must be taken to have established that damages are not to be regarded as too remote merely because, on the knowledge available to the defendant when the contract was made, the chance of the occurrence of the event which caused the damage would have appeared to him to be rather less than an even chance; it is generally sufficient that that event would have appeared to the defendant as not unlikely to occur; it is hardly ever possible to assess probabilities with any degree of mathematical accuracy; there is no warrant for regarding, as within the contemplation of the parties, any event which would not have appeared to the defendant, had he thought about it, to have a very substantial degree of probability; and the loss need not be such that the contract-breaker could see that it was certain to result.

In **Victoria Laundry**¹⁷, the loss of profits suffered by the plaintiffs, who were launderers and dyers, by reason of the delay in delivery of a boiler ordered by them was held to be not remote in view of the fact that the defendants had knowledge of the plaintiffs business, and it was held that the defendants could not reasonably contend that they could not foresee that loss of the business profits would result to the purchaser from a long delay in delivery. However in respect of a special lucrative dying contract that the plaintiffs had in prospect, it being not within the knowledge of the defendants, it was held that the defendants could not be made liable for loss of profits in respect of such special contracts. It was also held that, even for such special contract, some general, and perhaps conjectural, sum for loss of business has to be awarded.

If there is no market rate, the mode of estimating this value is different, but comes back to the elementary principle what were the goods worth at the time? (**Cooverjee Bjoja v. Rajendra Nath**). Where the parties knew that the agreement to purchase goods was entered into to supply to a third party under a sub-sale it is a clear case where, under Section 73 of the Contract Act, the party committing the

breach would be liable to pay the difference between the contract rate and the sub-sale rate if the parties knew, at the time of the contract, that a breach thereof would result in damages. But where there was no such knowledge, the only measure is the damage which naturally arose in the usual course of things from such breach. (**Divakaruni Sambasiva Rao**²²; **Cooverjee Bjoja**³¹).

In **Jackson v. Royal Bank of Scotland** the loss suffered by the plaintiffs, by reason of a negligent act of the Bank, was held recoverable even on the basis of expected repeat orders, and it was held that damages need not be confined only to the sub-sale contracts on hand. In **Hall**¹⁴ the House of Lords held that the damages, recoverable by the buyers, should not be limited to the difference between the contract price and the market price; and it included the buyer's own loss of profit on the resale because the parties knew that it was not unlikely that such resale would occur. In **Jugmohandas v. Nasserwanji**, as the defendant failed to deliver coal to the plaintiff on the prescribed date, a suit was filed for damages for breach of contract. On the date of the breach, there was practically no coal in the place of delivery of the description contracted for at the date at which delivery should have been given and, consequently, no market rate could be proved. At the hearing the plaintiffs produced a statement showing the rates at which he had, during the contract period, settled certain contracts for Powel Duffryn coal which he had with the Bombay Company Limited. The Bombay High Court Division Bench held that, under the special circumstance as to a market rate, the figures given in this statement might properly be received in evidence for the purpose of fixing the actual value of the coal at the dates of breach, thus affording a measure of the damages suffered. In **Divakaruni Sambasiva Rao**²² this Court held that the judgment of the Bombay High Court, in **Jugmohandas**³³, does not lay down any inflexible rule of law but only says that, having regard to the poverty of the material, the measure afforded by the re-purchase may be taken into consideration in fixing the actual value of the goods on the date of the breach.

It is not in dispute, and has been fairly conceded by Sri V.L.N.G.K. Murthy, Learned Counsel appearing on behalf of the plaintiff, that no machinery was deployed for excavation of the ore from the mines. The Court below has, evidently, erred in awarding damages to the plaintiff under the head "loss of investment on infrastructure".

Exs.A-73 and A-74 are copies of the returns filed by the plaintiff under Section 143(1)(a) of the Income Tax Act on 27.08.1993 declaring a net loss of Rs.2,68,936/- for the financial year 01.04.1992 to 31.03.1993. As noted hereinabove, the subject contract commenced on 16.12.1992 and the gestation period of three months ended on 15.03.1993. As the period, to which Ex.A-73 and Ex.A-74 related to, was just beyond the three month gestation period which expired on 15.03.1993, no reliance can be placed thereon to determine the cost of production of manganese ore for the period 16.12.1992 to 11.10.2013 when the plaintiff, on their own volition, stopped working the mine. In quantifying the damages payable to the plaintiff, the Court below accepted the documents in Ex.X-1 to X-40 which are bills, vouchers and statements for different periods in the financial years 1992-93 and 1993-94. These documents do not, even remotely, show that the cost of production of ore, as claimed by the plaintiff, was Rs.200/- per metric tonne. Except for the vouchers and statements marked as Ex.X-1 to X-40, no evidence was let in by the plaintiff to substantiate their plea that the production cost of ore was around Rs.200/- per metric tonne. The written submissions, filed on behalf of the plaintiff before this Court, contain two tables in Annexures 1 and 2 whereby the excavation cost is computed at Rs.177/- per metric tonne. The figures mentioned in these statements are not supported by any reliable evidence on record. These self-serving statements, based on figures which are incapable of independent verification, cannot be accepted as disclosing the actual cost of production/excavation of manganese ore.

In **State of Rajasthan v. Ferro Concrete Construction (P) Ltd.**, the Supreme Court held that, if there was no evidence and the amount claimed was awarded merely on the basis of the claim statement without anything more, it must be held that the award of damages is invalid. In **M/s.Vijaya Lakshmi Minerals Trading Company**⁵, a Division bench of this Court held that, no details had been given as to how the plaintiff was entitled for Rs.12,09,40,339/- by way of damages and compensation; he had not stated as to how the said figure had been arrived at; Ex.A-16 had been compiled from the original records which were not filed in the Court; the stock books, despatch registers and permit registers had also not been filed into the Court; Ex.A-20 contained only the rates, and it did not show the expenditure; the production accounts did not show the grades of the excavated ore; and, from the evidence, it was clear that the plaintiff had miserably failed to establish the damages

sustained by it viz., the cost of the mineral it was prevented from extraction minus the expenditure incurred for such production etc, and the net profit which could have been made by the plaintiff to arrive at the compensation/damages. In the present case also the plaintiff has not produced the books of accounts or any other independent evidence to show how they had fixed the cost of production/excavation of manganese ore at Rs.200/- per metric tonne.

The damages which the plaintiff can claim, under Section 73 of the Contract Act, is the difference between the contract rate and the sub-sale rate. In the present case, there was neither a contract rate nor did the defendant-Corporation sell manganese ore to the plaintiff. On the contrary, the plaintiff was required to incur expenditure of its own to extract ore from the mine, pay minimum consideration at Rs.35/- per metric tonne of the extracted ore irrespective of its quality, pay royalty thereon at the prescribed rate, thereafter transport the mineral outside the mine at their own cost, and then sell the ore to those who had placed orders on them. As shall be detailed hereinafter, the quality of the ore differed widely from one lot to another within the same bore-hole, and from one bore-hole to another. There is no evidence on record to show the quality of manganese ore in the mines, how long it would take for the plaintiff to extract ore from the mine, and the quantity of ore which the plaintiff would have been able to extract in the second year of the contract, as the first year of the contract ended on 15.12.1993 less than two weeks after the contract was terminated with effect from 04.12.1993.

The plaintiffs have not adduced any evidence to show the production cost per tonne of manganese ore separately for borehole Nos.5, 7 and 11. They have also not furnished information of the price at which the manganese ore was sold by them or, for that matter, the manganese content of the ore supplied by them to their customers. Though orders, for supply of manganese ore, was placed on them by M/s. Visakhapatnam Steel Plant, M/s. Mid-West Iron and Steel Co. Ltd, M/s. S.K. Sarawagi & Co. Pvt. Ltd and M/s. Nanubala Agencies, the receipts in Exs.X-42 to X-49 show that the plaintiff supplied manganese ore only to Mid-West Iron and Steel Co. Ltd and M/s. S.K. Sarawagi & Co. Pvt. Ltd. While the plaintiff transported 1252 metric tonnes of ore, and sold it to these two companies/firms, the receipts in Exs.A-42 to A-49 do not contain any details such as the Invoice value, the quantity of supplies, the rate per metric tonne of ore or the manganese content of the ore supplied to these two companies. Having effected supplies to these two companies,

the plaintiff has chosen not to file the invoices from which the sale price per metric tonne of ore, and the manganese content thereof, could have been ascertained.

Reliance placed by plaintiffs on the purchase orders, to calculate the sale price per metric tonne of manganese ore, is misplaced as the purchase orders merely reflect the price of manganese ore with a specific manganese content. These purchase orders also specify that manganese ore, with a manganese content below the prescribed percentage, would be rejected. The submission, that on an average the manganese content of the ore was above the specified percentage, is only to be noted to be rejected. The conditions stipulated in the purchase order provide, among others, for the quality of the extracted ore to be determined by a public analyst. There is no evidence on record to show that, if the average manganese content of the excavated ore was above the percentage stipulated in the purchase orders, the buyers would have been willing to purchase such material.

The Court below has erred in determining the quantum of damages based on the self-serving, vague and unreliable information furnished by the plaintiff. Neither the sale price, nor the cost of production, per tonne of manganese ore were computed on certified financial statements or on authentic and reliable documents. The subject contract was terminated with effect from 04.12.1993, just a fortnight prior to completion of the first year of the contract on 15.12.1993. Having stated that they had excavated only around 2800 metric tonnes of ore till 31.07.1993, and having voluntarily stopped work from 11.10.1993, the plaintiff has not shown how they could achieve production of 9000 metric tonnes of ore in the first year i.e. within a fortnight of termination of the contract. They have also not shown how they could have achieved 9500 metric tonnes in the second year when they voluntarily stopped work on 11.10.1993 consequent upon imposition of prohibition of employment of contract labour in manganese mines, and it is not even their case that the prohibition was lifted any time thereafter. No information has also been furnished whether such huge quantities of manganese ore was available in the subject mines for its excavation. The plaintiff has withheld information of the manganese content of the ore supplied by them to M/s. Mid West Iron and Steel Co. Ltd. and S.K. Sarawagi & Co. Pvt. Ltd, or the price per metric tonne of manganese ore supplied to them. They have, thus, failed to discharge the onus of establishing, with reliable documentary evidence, the cost of production, the sale price per metric tonne, the manganese content of the ore supplied by them, and the quality of the ore available in the subject mines. Absence

of any evidence in this regard, coupled with lack of authentic information regarding the cost which the plaintiff had incurred in extracting the 2800 metric tonnes of ore during the first year, renders computation of damages for the second year well nigh impossible. We need not dwell on this aspect any further as the plaintiff would, in any case, not be entitled for damages in view of the force majeure event of prohibition of employment of contract labour in manganese mines.

POINT NO.11:

In the plaintiff's appeal in C.C.C.A. No.138 of 2003 Sri V.L.N.G.K. Murthy, Learned Counsel appearing on their behalf, would submit that, while decreeing the suit in part, the court below had deducted Rs.30/- towards the cost of excavation; it granted a decree for Rs. 34,30,667-11ps with interest at 18%; that part of the judgement of the Court below, whereby the cost of excavation of ore was enhanced by Rs.30/- per metric tonne and interest was granted only at 18 % p.a from the date of the suit till the decree and 6% p.a from the date of the decree till its realization, is being questioned; the plaintiffs have submitted the entire material regarding justification for the cost of excavation in the appeal filed by the defendant-Corporation; there is no justification in deducting any further sum towards the cost of excavation; and the plaintiffs had given a notice in Ex.A-85 dated 21-2-1994 wherein a demand was made for payment of the amount with interest under the Interest Act, 1978.

By Ex.A-85 legal notice dated 21.02.1994, the plaintiff called upon the Corporation to pay Rs.39,46,657.23 ps. together with interest at 18% p.a. along with notice charges of Rs.3,000/- within 15 days from the date of the notice. Even in the plaint filed in O.S.No.496 of 1994, the plaintiff has only sought interest at 18% p.a. from the date of the suit till realisation, and not beyond. As shall be detailed hereafter, the plaintiff has been held not entitled for damages consequent upon termination of the contract by the defendant-Corporation. It matters little, therefore, whether or not the Court below was justified in increasing the estimated cost of production from Rs.200/- per metric tonne to Rs.230/- per metric tonne.

POINT NO.12:

Sri Y. Chandrasekhar, Learned Counsel for the defendant-Corporation, would submit that, even if the occurrence of landslide on 2nd/3rd August, 1993, Ex.A-42

letter dated 30.08.1993 issued by the Director of Mines Safety prohibiting mining operations, and prohibition of employment of contract labour in manganese mines by the Central Government are presumed to be force majeure events, the force majeure clause indemnifies both the parties to the contract from claiming damages against each other; if the plaintiffs are absolved from payment of the monthly minimum consideration for four months i.e. from August to November, 1993, the Corporation cannot be held liable for damages more so as, despite the plaintiff stating that they were ready and willing to perform their part of the contract, they could not have discharged their contractual obligations; the plaintiff has neither stated that, inspite of abolition of contract labour in manganese mines by the Government of India, they were in a position to execute the contract nor did they let in evidence to show how they could execute the contract in the light of this prohibition; the suit as filed is misconceived for the reason that the plaintiff is claiming damages for frustration of the contract on the occurrence of a force majeure event; and if the orders of the authorities to stop work is to be construed as a justification for the plaintiff not paying the minimum monthly consideration from August to November, 1993, on the same reasoning the Corporation would have no obligation to reimburse the plaintiff for any loss which they may have suffered.

Sri V.L.N.G.K. Murthy, Learned Counsel appearing on behalf of the plaintiff, would submit that, under Clause 17 of the Contract, if the force majeure conditions subsist for a period of two months, the Corporation has the right to terminate the contract with no strings attached; the Corporation did not invoke Clause 17 and, instead, terminated the contract invoking Clause 13; and it is, therefore, not open to the Corporation to argue that, in view of the force majeure conditions, the contract got terminated under Section 56 of the Contract Act.

Clause 17 of Ex.A-10 agreement is the force majeure clause, and Clause 17.1, thereunder, reads thus:

“In the event of either party being rendered physically unable by force majeure to perform any obligations required to be performed by them under the contract the relative obligation of the party affected by such force majeure should be suspended for the period during which such cause actually lasts. The terms ‘Force Majeure’ shall mean act of God, war, civil riots/Fire directly affecting the performance of the contract, flood, earthquake, hurricane, lockouts, strikes, civil war, Act and Regulations of the Government. Upon the occurrence of such cause and upon its termination, the party alleging that it has been rendered unable as aforesaid thereby, shall notify the other party in writing within 72 (seventy two) hours of the alleged beginning and ending thereof giving full particulars and satisfactory evidence in support of its claim. If performance of the contract is suspended by force

majeure conditions lasting for more than 2 (two) months, the Corporation shall have the option of canceling the contract in whole or part of its discretion without any liability on its part.”

By their letter in Ex.A-23 dated 04.10.1993, the plaintiff informed the defendant-Corporation that the department of Labour (Central) was going to prohibit employment of contract labour in manganese mines; in case of prohibition they may have to stop the work; and the defendant-Corporation should revise the terms of the subject agreement so as to continue the work on a joint venture basis. By their letter in Ex.A-24 dated 10.10.1993 the plaintiff requested the defendant-corporation to finalise the proposal (regarding joint venture) immediately, in the event of prohibition of contract labour in the mines, so as to continue the work for the full agreement period.

By Ex.A-47 letter dated 18.10.1993, the Labour Enforcement Officer forwarded a copy of the Government of India notification dated 23.03.1993 (Ex.A-70), prohibiting employment of the contract labour in manganese mines, to the plaintiff. By Ex.A-68 letter dated 25.10.1993, the plaintiff informed the Corporation that they were enclosing a copy of Ex.A-69 letter dated 18.10.1993 received by them from the Labour Enforcement Officer (Central), Visakhapatnam. Exs.A-69 and A-70 are the same notification dated 23.03.1993 issued by the Government of India, in exercise of the powers conferred under Section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970, prohibiting employment of contract labour in manganese mines in the country with immediate effect. In Ex.A-50 letter dated 03.11.1993, the plaintiff stated that they had stopped the work temporarily on 11.10.1993 on the directions of the Labour Enforcement Officer (Central), Visakhapatnam; and they had not violated Clause 13 of the agreement. The defendant-Corporation terminated the contract by Ex.A-54 letter dated 22.11.1993, and informed the plaintiff that, although the provisions of the Contract Labour (Regulation and Abolition) Act was inapplicable, the plaintiff had stopped the work voluntarily from 11.10.1993, and did not resume the work inspite of directions from Corporation to continue the work.

Clause 11, of Annexure III of Ex.A-1 tender notice dated 20.08.1992, required the contractor to get himself registered, within a period of 30 days from the date of commencement of work, under the Contract Labour (Regulations and Abolition) Act, and to comply with the Act and the Rules made thereunder. The said clause

required the contractor to arrange, at his cost, shelter and water to the workmen engaged by him. The plaintiff was obligated, in terms of the aforesaid clause, to register themselves under the Contract Labour (Regulation and Abolition) Act, as it is only then could they have employed their labourers (contract labour) in manganese mines. It is only because prohibition of employment of contract labour disabled them from employing their labourers in manganese mines, did the plaintiff request for the contract to be modified, to a joint venture with the defendant-Corporation, to enable them to continue excavation of manganese ore.

It is evident from the letter of the defendant corporation dated 22.11.1993 that the plaintiff had stopped the work voluntarily from 11.10.1993, and had not resumed work thereafter on the ground that the Government of India notification dated 23.03.1993 prohibited employment of contract labour in manganese mines. The force majeure events, referred to in Clause 17.1 of Ex.A-10 agreement, included Acts and Regulations of the Government rendering either party physically unable to perform any obligation required to be performed by them under the contract. Clause 17.1 stipulated that the relevant obligations of the parties, affected by such force majeure events, is suspended for the period during which the cause actually lasted. It is not even the case of plaintiff that the Government of India notification dated 23.03.1993 was subsequently rescinded. It is clear that, pursuant to the aforesaid notification and on coming to know of its contents, both the Corporation and the plaintiff were discharged of their respective obligations under the contract. Clause 17.1 also provided that, if performance of the contract is suspended by a force majeure event for more than two months, the Corporation would have the option of cancelling the contract. While the contract was terminated (by Ex.A-54 letter dated 22.11.1993) for failure, on the part of the plaintiff, to pay minimum consideration arrears, the Corporation would have been justified in terminating the contract on account of the force majeure event of Ex.A-70 Government of India notification dated 23.03.1993 prohibiting employment of contract labour in manganese mines.

The first task of the assessor of damages is to estimate, as best as he can, what the plaintiff would have gained if the defendant had fulfilled his legal obligations. (**M/s.Commercial Metal Corporation**¹⁹; **Lavarack**²¹; **Ogus Law of Damages 1973 ed. pp. 284-285**). The principle behind Section 73 of the Indian Contract Act is that, in giving damages for breach of the contract, the party complaining should, so far as it is possible, be placed in the same position as he

would have been in if the contract had been performed. (**Divakaruni Sambasiva Rao**²²; **M/s.Commercial Metal Corporation**¹⁹; **Lavarack**²¹; **Ogus Law of Damages 1973 ed. pp. 284-285**). **Halsburys Laws of England, 2nd Edition, Volume 10, (Lord Hailsham) at page 123**). The governing purpose of damages is to put the party whose rights have been violated in the same position, so far as money can do so, as if his rights had been observed. (**Victoria Laundry (Windsor) Ld.**¹⁷; **Sally Wertheim**¹⁸).

Even if termination of the contract by the defendant Corporation, by its letter in Ex.A-54 dated 22.11.1993, is held to be illegal, the only consequence would be to put the plaintiff back in the same position they were in before the contract was terminated. While the plaintiff had orders on hand, they have not been able to show how they would have been able to continue excavation of manganese ore after they stopped work on 11.10.1993 as it is not even their case that the order of the Central Government, prohibiting employment of contract labour in manganese mines, was lifted any time thereafter. Thus, even if the plaintiff were to be placed back in the very same position, they were in before the contract was terminated, it is evident that they could not have excavated any mineral from the subject mines as employment of contract labour was prohibited in manganese mines.

The common law principle of frustration has received statutory recognition by its incorporation in Section 56 of the Indian Contract Act. (**G.A. Galia Kotwala and Co. Ltd rep by its Power Agent and Manager, Kalidas D. Desai v. K.R.L. Narasimhan**). The first paragraph of Section 56 of the Contract Act provides that an agreement to do an act impossible in itself is void. The second paragraph provides that a contract to do an act becomes unenforceable if the act becomes (a) impossible; or (b) for reason of some event which the promisor could not prevent. This section also provides that it becomes so unenforceable when the act becomes impossible or unlawful. (**Central Bank of India Staff Co-opertive Building Society Ltd., Vijayawada v. Dulipalla Ramachandra Koteswara Rao**). The expression 'frustration of the contract' is an elliptical expression. The fuller and more accurate expression is 'frustration of the adventure or of the commercial or practical purpose of the contract'. (**Ram Kumar v. P.C. Roy**). Frustration occurs whenever the law recognizes that, without default of either party, a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it radically different from that which was undertaken by the

contract. There must be such a change, in the significance of the obligation, that the thing undertaken would, if performed, be a different thing from that contracted for. (**Davis Contractors Ltd. v. Fareham Urban District Council; Dulipalla Ramachandra Koteswara Rao**³⁶).

Frustration signifies a certain set of circumstances arising after the formation of the contract, the occurrence of which is due to no fault of either party and which renders performance of the contract by one or both parties physically and commercially impossible. Where the entire performance of a contract becomes substantially impossible without any fault on either side, the contract is prima facie dissolved by the doctrine of frustration. (**Dulipalla Ramachandra Koteswara Rao**³⁶). The law excuses further performance, under the doctrine of frustration, where the contract is silent as to the position of the parties in the event of performance becoming literally impossible or only possible in a very different way from that originally contemplated. (**Dulipalla Ramachandra Koteswara Rao**³⁶). The legal effect of the frustration of the contract depends upon its occurrence in such circumstances as to show it to be inconsistent with the further prosecution of the adventure. (**Ram Kumar**³⁷; **Hirji Mulji v. Cheong Yue Steamship Co. Ltd.**). The whole doctrine of frustration has been described as a reading into the contract of implied terms to give effect to the intention of the parties. (**Ram Kumar**³⁷).

The essential principle upon which the doctrine of frustration, embodied in Section 56 of the contract Act, is based is the impossibility or rather the impracticability in law or fact of the performance of a contract brought about by an unforeseen and unforeseeable sweeping change in the circumstances intervening after the contract was made. In other words while the contract was properly entered into, in the context of certain circumstances which existed at the time it fell to be made, the situation has so radically changed subsequently that the very foundation which subsisted underneath the contract as it were gets shaken, nay, the change of circumstances is so fundamental that it strikes at the very root of the contract, then the principle of frustration steps in and the parties are excused from or relieved of the responsibility of performing the contract which otherwise lay upon them. (**Hamara Radio and General Industries Ltd., Co., Delhi v. State of Rajasthan**).

In cases where a defence of frustration is raised, what the Court has to consider is whether the circumstances pleaded did exist which could reasonably be considered as sufficient to hold that the parties are absolved from their obligations under the contract. (**G.A. Galia Kotwala and Co. Ltd**³⁵). The relief is given by the Court on the ground of subsequent impossibility when it finds that the whole purpose or basis of a contract was frustrated by the intrusion or occurrence of an unexpected event or change of circumstances which was beyond what was contemplated by the parties at the time when they entered into the agreement. When such an event or change of circumstance occurs, which is so fundamental as to be regarded by law as striking at the root of the contract as a whole, it is the Court which can pronounce the contract to be frustrated and at an end. (**Satyabrata Ghose v. Mugneeram Bangur and Co.,; H.V. Rajan v. C.N. Gopal**).

Where one party claims that there has been frustration and the other party contests it, the Court has to decide the issue 'ex post facto' on the actual circumstances of the case. (**Ram Kumar**³⁷; **Hirji Mulji**³⁹; **Twentsche Overseas Trading Co. Ltd. v. Uganda Sugar Factory Ltd.,**). The question whether frustration has occurred or not depends on the nature of the contract, the surrounding circumstances and the events which have occurred. (**Twentsche Overseas Trading Co. Ltd.**⁴³; **Ram Kumar**³⁷).

In every case where then is a dispute between the parties as to the frustration of a contract, the Court must ascertain the substance of the contract, and then examine whether the contract can be substantially performed notwithstanding the supervening event. In cases where the performance of the contract gets so frustrated, neither party can get the relief it expects or claims because no party is really to blame for what has happened, and therefore the law imputes blame or responsibility to neither of them. (**Hamara Radio and General Industries Ltd., Co., Delhi**⁴⁰; **Satyabrata Ghosh**⁴¹; **State of Rajasthan v. Madanswarup**).

Even if it is held that the defendant-Corporation had illegally terminated the contract, for non-payment of minimum consideration of Rs.70,000/- (ie minimum consideration of Rs.17,500/- per month for the four month period from August to November, 1993) though they were entitled for payment of minimum consideration of Rs.41,209.68 ps for the two months 11 days period from August till 11.10.1993, the plaintiff is only entitled to be put back in the same position they were in before the contract was

terminated, and to be compensated for the loss and damage, if any, suffered by them for the rest of the contract period. Ex.A-70 Government of India notification dated 23-03-1993 prohibiting employment of contract labour in manganese mines, a force majeure event under clause 17 of Ex.A-10 agreement, discharged both the plaintiff and the defendant-Corporation of their obligations under the contract. While clause 2.1 of Ex.A-10 agreement provides that the contract shall be for a period of two years from 16.12.1992 to 15.12.1994, the contract was terminated with effect from 04.12.1993 i.e., almost at the end of the first year of the agreement. The plaintiff had, admittedly, stopped working the mine from 11.10.1993 onwards. Their failure to continue working the mine from 11.10.1993 till the contract was terminated with effect from 04.12.1993 is on account of a force majeure condition for which no damages can be claimed in view of Clause 17.1 of Ex.A10 agreement.

The plaintiffs claim for damages for the period subsequent to 04.12.1993 i.e., for the 11 remaining days in the first year, and for the second year of the contract from 16.12.1993 to 15.12.1994, is based on the premise that they are required to be put back in the very same position they were in prior to the illegal termination of the contract, and to be permitted to exercise their rights under the contract till completion of the two year period on 15.12.1994. It is not even pleaded by the plaintiff that prohibition of employment of contract labour in manganese mines, imposed by the Central Government, was lifted any time after the contract was terminated. Even if the plaintiff were to be put back in the position they were in before the contract was terminated w.e.f. 04.12.1993, they would not have been able to excavate the ore from the subject mines in view of prohibition of employment of contract labour in manganese mines.

When people enter into a contract which is dependant for its performance on the continued availability of a specific thing, and that availability comes to an end by reason of circumstances beyond the control of the parties, the contract is dissolved. (**Ram Kumar**³⁷). After the formation of a contract, certain sets of circumstances arise which, owing to the fault of neither party, render fulfilment of the contract by one or both of the parties impossible in any sense or mode contemplated by them. These sets of circumstances have been held by Courts to release both parties from any further obligation to fulfil the contract. (**G.A. Galia Kotwala and Co. Ltd** ³⁵; **Pollock on Contracts, 13th Edn. by P. H. Winfield**). If an untoward event, or change of circumstance, totally upsets the very foundation upon which the parties rested their

bargain, it can very well be said that the promisor finds it impossible to do the act which he promised to do. (**Satyabrata Ghose**⁴¹; **H.V. Rajan**⁴²).

In **Kunjilal v. Durga Prasad** the buyer sued for damages for failure to supply the goods. In order to give business efficacy to the transaction, a condition was implied into the contract and, in as much as wagons were not available, it was held that the contract was void being impossible of performance; and that the buyer was not entitled to recover any compensation from the seller. In **G.A. Galia Kotwala and Co. Ltd**³⁵ it was held that in commercial contracts, where the contract becomes impossible of performance by reason of a state of war or by an act of the executive Government or the contract, which would otherwise be expected to be ordinarily performed, is delayed by reason of certain regulations imposed by the Government making the performance of such contract dependent upon the grant of licence or permit, the parties need not wait for an indefinite period in the hope of the control orders being relaxed or the licence & permit being granted.

In cases where the Court gathers, as a matter of construction, that the contract itself contained impliedly or expressly a term according to which it would stand discharged on the happening of certain circumstances, the dissolution of the contract would take place under the terms of the contract itself. (**Satyabrata Ghose**⁴¹; **H.V. Rajan**⁴²). While Ex.A-10 Agreement was executed on 05.12.1992, the Government of India notification, prohibiting employment of contract labour in manganese mines, was issued thereafter on 23.03.1993. The plaintiff voluntarily stopped excavation of manganese ore from 11.10.1993, on coming to know that employment of contract labour was prohibited in manganese mines. As prohibition of employment of contract labour (a force majeure condition under clause 17.1 of the contract) rendered fulfilment of the contract impossible in the mode contemplated by the parties, owing to no fault of either party, both parties were discharged of their obligations under the contract, as it is not in dispute that the force majeure condition continued to remain in force even after termination of the contract. It is for this reason that the plaintiff, by their letter in Ex.A-23 dated 04.10.1993, requested the defendant-Corporation to modify the contract and enter into a joint venture with them. This request of the plaintiff shows that they were conscious that the obligations under the contract could not be fulfilled, by either of the parties to the contract, in the present form. Consequently the subject contract stood discharged in terms of

Section 56 of the Indian Contract Act and the plaintiff is, therefore, not entitled for damages for breach of contract.

POINT NO.13:

Sri Y.Chandrasekhar, Learned Counsel for the defendant-Corporation, would submit that the plaintiff had sought compensation for the loss allegedly suffered by them due to seizure of the pit head stock; it is the specific case of the plaintiff, in para 9 of the plaint, that the entire 2798.60 metric tonnes was produced before the end of July, 1993; this deliberate false statement was further spoken to by P.W.1 that the entire 2798.60 metric tonnes was produced by 31st July, 1993; Ex.A26, which shows that there was production in borehole No.7 and 11, falsifies the plaintiff's contention that the entire production was prior to 31st July, 1993; they filed receipts showing payment of royalty to the extent of the pit head stocks under Ex.A-31 & 32; the royalty paid by them is in accordance with the provisions of the Mines & Minerals (Regulation and Development) Act, 1957; royalty is paid in accordance with the mineral content in the extracted ore; item 24(b) & (e), relates to royalty of Rs.17/- per MT for mineral of 25% to 32%, and Rs.7/- per MT for mineral below 25%; Ex.A31 and Ex.A32 show that, even according to the plaintiff, the manganese content of the extracted ore was below 25%; in Ex.A15 to 19, the purchasers stated that they would "reject" material below 24-26% manganese ore; from the orders, said to have been placed with the Plaintiff, it is evident that the pit head stock would not have been purchased; the analysis reports, in Exs.A-57 to 65, do not relate to the pit head stocks; on enquiry Visakhapatnam Steel Plant had informed, under Ex.B-14, that the pit head stock did not meet their specifications; in view of Clause 10 of Ex.A-10 Agreement, the pit head stock left over, after 15 days from the expiry/determination of the contract, would become the sole property of the Corporation, and they would have the right to dispose it off as they deemed fit; efforts made by the Corporation, through Ex.B1 to B15, did not bear result as the pithead stock was of inferior quality; if the pithead stock was really useful, the Plaintiff, would have paid the paltry sum of Rs.70,000/- and lifted the stocks; and, as such, there cannot be any compensation for the pit head stocks.

On the other hand Sri V.L.N.G.K. Murthy, Learned Counsel appearing on behalf of the plaintiff, would submit that the title to the pithead stock passes to the

corporation only after expiry of 15 days *after termination of the contract*, as the termination notice issued by the Corporation is illegal, clause 10 would not come into operation; every test report indicates the quantity and Mn. content of each stock; multiplying the quantity and Mn content, and averaging the total quantity, the average manganese content of pit head stock is arrived at; accordingly, the average Mn content was 26.46%; and this quality suits the requirement of all purchasers.

In para 9 of their plaint, the plaintiff stated that they had produced manganese ore of an extent of 2,798.60 metric tonnes by the end of July, 1993; in order to keep up their commitments, they were able to supply to their customers 1252 metric tonnes of manganese ore, and subsequently the Corporation had deliberately failed to issue necessary permits for lifting and transporting the existing stocks of 1546.60 metric tonnes. In Ex.A-22 letter dated 28.07.1993, the plaintiff stated that, after inter-connecting the trial pits, they found that the ore recoveries had a manganese content of 28% on an average; and they had so far mined around 1500 metric tonnes. By their letter in Ex.A-23 dated 04.10.1993, the plaintiff informed the Corporation that they had produced around 2100 metric tonnes of Ore till 31.07.1993, as against the targeted production of 2250 metric tones. By their letter in Ex.A-24 dated 10.10.1993, the plaintiff informed the Corporation that the excavated material was around 2100 metric tonnes till 31.07.1993; they had so far lifted around 1200 metric tones; and only the balance of 900 metric tones was lying in the mines.

By their telegram, in Ex.A-27 dated 26.10.1993, the defendant-Corporation informed the plaintiff that they had abruptly stopped the work from 11.10.1993 and they should explain, within seven days, why the present pithead stock of 1,546 metric tones should not be seized and kept at the discretion of the corporation. Again by their letter in Ex.A-48 dated 28.10.1993, the defendant-Corporation sought the plaintiff's explanation for confiscation of the pit head stock. By their letter in Ex.A-51 dated 08.11.1993, the plaintiff informed the Corporation that they were the owners of the pit head stock of 1546.60 metric tonnes; and the defendant-Corporation did not have any right on the material. By Ex.A-55 letter dated 06.12.1993 the plaintiff informed the Corporation that, having received royalty and labour cess amounts, the Corporation had illegally confiscated the pit head stock worth Rs.6.5 lakhs based on the allegation that they had stopped the work; and they were always ready to perform their part of the contract.

Clause 10 of Ex.A-10 agreement dated 05.12.1992 provides that, at the expiration or sooner determination of the contract, the contractor shall lift the ore produced by them within 15 days from the date of expiry or determination of the contract period; any material left over, after 15 days from the expiry/determination of the contract, would be the sole property of the Corporation; and the Corporation would have the right to dispose of the same as deemed fit. The obligation to lift the pit-head stock, within fifteen days of termination of the contract, would have arisen only if termination of the contract was legal and valid, and not otherwise. As termination of the contract by the defendant-Corporation has been held to be illegal, they cannot claim ownership of the pit head stock on the specious plea that the plaintiff did not lift the stock within fifteen days thereafter. Even otherwise, failure of the plaintiff to lift the pit head stock is on account of the defendant's failure to issue transport permits. Having prevented the plaintiff from transporting the ore, the defendant cannot now turn around and blame the plaintiff for not having lifted the pit head stock within fifteen days or claim that, as a result of the plaintiff's failure to do so, the pit head stock became their property.

While the plaintiff has pleaded that they had produced 2798.60 metric tonnes of ore by 31.07.1993, and were able to supply 1252 metric tonnes to their customers, their plea regarding production of ore varies from one letter to another. While in Ex.A-22 dated 28.07.1993 they stated that they had so far mined 1500 metric tonnes, in Ex.A-23 letter dated 04.10.1993 they stated that they had produced 2100 metric tonnes of ore till 31.07.1993. Again by their letter in Ex.A-24 dated 10.10.1993, while stating that they had excavated 2100 metric tonnes of ore till 31.07.1993, the plaintiff informed that they had lifted around 1200 metric tonnes, and the balance 900 metric tonnes was lying in the mines. The quantity of pit head stock increased to 1546.60 metric tonnes in Ex.A-35 letter dated 29.10.1993. In Ex.A-50 letter dated 03.11.1993, the plaintiff stated that the pit head stock of 1546 metric tonnes was mined prior to 31.07.1993. In Ex.A-55 letter dated 06.12.1993 the plaintiff stated that they had produced 2800 metric tonnes of ore before 31.07.1993.

The proceedings in Ex.A-26 dated 20.10.1993, signed by the General Manager (Technical), Officer-Survey and the General Foreman on behalf of the defendant-Corporation, and Sri P. Nageswara Rao on behalf of the plaintiff, records that, on visiting the mine on 20.10.1993, the following were observed: (1) in pit No.7 ground stock was $128.55 \text{ m}^3 + 27 \text{ metric tonnes}$; (2) in pit No.5 ground stock was 531.82 m^3

+ 117 metric tonnes; and (3) in pit No.11 ground stock was $110.89 \text{ m}^3 + 9$ metric tonnes, and the total ground stock as on 20.10.1993, as measured in the presence of the team, was 1,546.60 metric tonnes. From Ex.A-26 proceedings dated 20.10.1993, it is evident that the pit head stock of 1,546.60 metric tonnes was the stock of ore from bore-hole No.7 of 259.28 metric tonnes, of bore-hole No.5 of 1077.95 metric tonnes, and of bore-hole No.11 of 209.37 metric tonnes. As the correspondence between the plaintiff and the defendant-Corporation shows that the plaintiff carried on mining operations at bore-hole No.5 before collapse of the mine, the quantity of ore mined from bore-hole Nos.7 and 11 evidently represent the quantity mined subsequent to 02/03.08.1993 when bore-hole No.5 collapsed. The contention that the entire 2,798.60 metric tonnes of ore was produced prior to 31.07.1993 is, therefore, not tenable.

By Ex.A-15 letter dated 29.04.1993, Visakhapatnam Steel Plant asked the plaintiff to supply 4000 metric tonnes at Rs.340/- per tonne, with a manganese content of a minimum of 28%. The terms and conditions of supply stipulated that the chemical certification should be done by a public analyst to be appointed by the supplier under approval of Visakhapatnam Steel Plant as per IS standards. Ex.A-19 is the letter dated 28.07.1993 issued by Nanubala Agencies asking the plaintiff to supply ore at Rs.405/- per metric tonne, with a manganese content between 22% and 24%, and for rejection below 20%. No evidence has been adduced to show that the plaintiff had supplied manganese ore either to Visakhapatnam Steel Plant or to M/s.Nanubala Agencies.

Exs.X-42 to X-46 are the letters addressed by M/s.Mid West Iron and Steel Company Limited towards advance payment, and for payment towards the invoice raised on them by the plaintiff. These receipts refer to the invoices or bills issued by the plaintiff earlier. Similarly, Exs.X-48 and X-49 are the letters of M/s.S.K.Sarawagi and Company Private Limited for advance payment to, and final settlement of the bills of, the plaintiff. Both these letters are silent regarding the quantity of manganese ore supplied in metric tonnes or the rate per metric tonne of such supplies. While the plaintiff claims to have supplied 1252 metric tonnes of manganese ore to their customers, they have chosen not to furnish the invoice particulars, the quantity supplied, the rate per metric tonne, the manganese content of the supplied material etc even for the supplies effected by them to M/s.S.K.Sarawagi & Co Ltd and to M/s.Mid West Iron and Steel Company Ltd.

The correct value of the pit head stock could have been easily determined if only the plaintiff had, in addition to the manganese content of the pit head stock of 1546.60 metric tonnes, furnished details of the rate per metric tonne and the quality of the manganese ore supplied by them to M/s.Mid West Iron and Steel Company Limited and M/s.S.K.Sarawagi and Company Private Limited i.e. whether it had the minimum manganese content stipulated in the purchase orders issued by them, and the rate charged by the plaintiff per metric tonne of manganese ore supplied to them. We find considerable force in the submission of Sri Y. Chandrasekhar, Learned Counsel for the defendant-Corporation, that, if the value of the pit head stock was really Rs.6,57,305/- as claimed by the plaintiff, there was no reason for them not to pay the consideration arrears of Rs.70,000/- and transport the pit head stock thereafter. At the same time, we cannot also ignore the fact that the defendant-Corporation had stopped issuing permits because the plaintiff had not completed removal of the overburden to enable the prohibitory orders, imposed by the Director of Mines Safety, to be lifted.

While absence of the required details makes determination of the correct value of the pit head stock impossible, we must, nonetheless, endeavour to estimate the value of the pit head stock, as the plaintiff is entitled for compensation for the illegal retention of pit head stock by the defendant-Corporation. By Ex.A-40 letter dated 16.08.1993, the plaintiff informed the Corporation that, because of heavy rains and the land slide near bore-hole No.5, a good working area of high grade zone had been lost, and they were left with only a low grade area near bore-hole No.7 for production. Ex.A29 dated 05.07.1993 was issued by the defendant-Corporation acknowledging receipt of Rs.6,000/- as royalty for manganese ore of 250 metric tonnes at Rs.7/- per metric tonne, and for 250 metric tonnes at Rs.17/- per metric tonne. Ex.A-30 dated 29.07.1993 was issued by the defendant-Corporation acknowledging receipt of Rs.6,000/- as royalty for manganese ore of 250 metric tonnes at Rs.7/- per metric tonne, and 250 metric tonnes of ore at Rs.17/- per metric tonne. Ex.A-31 dated 11.10.1993 was issued by the defendant-Corporation acknowledging receipt of Rs.5,670/- as royalty for 810 metric tonnes of ore below 25% grade at Rs.7/- per metric tonne, and Ex.A-32 dated 20.10.1993 was issued by the defendant-Corporation acknowledging receipt of Rs.5,166/- as royalty for 738 metric tonnes, of manganese ore below 25% grade, at Rs.7/- per metric tonne.

During the relevant period the royalty payable on ore with a manganese content of above 25% was Rs.17/- per metric tonne, and for ore with a manganese content below 25% the royalty payable was Rs.7/- per metric tonne. Exs.A-29 and A-30 thus show that, while the manganese content of 500 metric tonnes was below 25%, the manganese content in the remaining 500 metric tonnes was above 25%. Exs.A-31 and A-32 show that the manganese content of 1548 metric tonnes was below 25% grade. Of a total quantity of 2548 metric tonnes of manganese ore, for which royalty was paid by the plaintiff under Ex.A-29 to Ex.A-32, 500 metric tonnes alone had a manganese content above 25%, and the remaining 2048 metric tonnes had a manganese content below 25%. From these royalty receipts it is clear that the plaintiff could only have supplied 1002.40 metric tonnes to their customers (ie 2548 metric tonnes for which royalty was paid minus 1546.60 metric tonnes of pit head stock), and not 1252 metric tonnes as claimed by them.

Clause 6 of Annexure-III of Ex.A-1 tender notice dated 20.08.1992 relates to determination of quality and, thereunder, the quality of the material was required to be determined by the Corporation on the basis of stock sampling; the analysis would be done in a laboratory as nominated by the defendant-Corporation; and such analysis would be final for all intents and purposes. Ex.A-57 to Ex.A-67 are the test certificates issued by M/s.Essen & Co. analysing the samples furnished to them by the plaintiff. M/s.Essen & Co was not nominated by the defendant-Corporation for stock sampling. No person from Essen & Co was examined by the plaintiff nor were Ex.A-57 to Ex.A-67 marked through a public analyst. The genuineness of these test certificates is not beyond doubt. Even otherwise, Ex.A-57 dated 29.07.1993 only shows the manganese content of the sample to be 21.38%. Ex.A-58 dated 04.08.1993 discloses the manganese content of the sample to be 24.52%. Ex.A-59 dated 04.08.1993 shows the manganese content of the sample to be 30.19%. Ex.A-60 dated 04.08.1993 shows that the manganese content of the sample was 26.01%. Ex.A-61 dated 04.08.1993 is the analysis report of three different samples. The manganese content of the first sample is shown to be 29.67%, the manganese content of the second sample is shown to be 28.28%, and the manganese content of the third sample is said to be 34.22%. Ex.A-62 dated 13.08.1993 shows that for one lot the manganese content was 21.38%, and for another lot it was 29.49%. Ex.A-63 dated 13.08.1993 discloses the analysis results of two samples – the first sample was found to have a manganese content of 26.51%, and the second sample was

found to have a manganese content of 17.10%. Ex.A-64 dated 17.09.1993 shows the manganese content of Lot No.1 to be 24.63%, and Lot No.2 to be 31.70%. Ex.A-65 dated 17.09.1993 shows that the manganese content of the analysed lot was 28.17%.

The defendant-Corporation sent ten samples of manganese ore from Baguvalasa mines for testing on 24.01.1994. By Ex.B-2 test certificate dated 31.01.1994, Ana Labs, Hyderabad informed the Corporation that the test results showed the manganese content of the ore to be:-

Sl.No.	Sample No.	Mn.	Quantity	
				in M.Ts.

- | | | | |
|-----|-------|-------|--------|
| 1. | 1/P5 | 3.16 | 218.00 |
| 2. | 1/P7A | 12.64 | 26.88 |
| 3. | 1/P11 | 12.70 | 106.34 |
| 4. | 2/P5 | 23.65 | 107.88 |
| 5. | 2/P7A | 16.33 | 48.58 |
| 6. | 2/P11 | 25.64 | 104.73 |
| 7. | 3/P5 | 13.37 | 497.97 |
| 8. | 3/P7A | 25.64 | 25.38 |
| 9. | 4/P7B | 16.20 | 65.21 |
| 10. | 5/P7B | 18.57 | 91.88 |

Total 1292.85 MTs			

While the pit head stock, as per Ex.A-26 dated 20.10.1993, was 1546.60 metric tonnes, the quantity tested under Ex.B-2 dated 31.01.1994 was 1292.85 metric tonnes, leaving only 253.75 metric tonnes of pit head stock untested. The aforesaid test report shows that only two of the ten samples had a manganese content of above 25% i.e. sample No.6 of 25.64% and sample No.8 of 25.64%. In all only 130.11 metric tonnes, out of the total tested quantity of 1292.85 metric tonnes of ore,

had a manganese content of more than 25%.

While the order of Visakhapatnam Steel Plant was for supply of ore with a manganese content of not below 26%, the order of M/s.Mid West Iron and Steel Company was for supply of ore with a manganese content above 26%. The record of discussions with M/s.S.K.Sarwagi and Company Limited shows that they wanted supplies of ore with a manganese content of 28%. It is only M/s.Nanubala Agencies which asked for supply of manganese ore from Baguvalasa mines between 22% and 24%. By their letter in Ex.A-84 dated 06.04.1994, M/s.Visakhapatnam Steel Plant informed the plaintiff that the order placed by them, for 4000 metric tonnes of manganese ore lumps, should have been supplied by 30.06.1994; and till date they had neither received any supplies nor any communication regarding progress of the supply order. As no evidence was adduced by the plaintiff to show that they supplied manganese ore either to Visakhapatnam Steel Plant or to M/s.Nanubala Agencies, it is only the order specifications of M/s.Mid West Iron and Steel Co. Ltd. and M/s.S.K.Sarawagi and Co. Ltd, which are relevant. While the former wanted supplies of ore with a manganese content above 26%, the latter wanted supplies of ore with a manganese content of 28%.

In assessing the value of the pit head stock, it is also necessary to note that the defendant-Corporation issued Ex.B-1 notification dated 02.05.1994 inviting offers by 26.05.1994 for sale of the pit head stock of about 1,300 metric tonnes of graded and ungraded ROM manganese at their Baguvalasa mine on an 'as is where is' basis with a probable manganese content of 12 to 25% averaging 17%. Even prior thereto, M/s.S.K.Sarawagi & Co. Pvt. Ltd. informed the defendant-Corporation, vide Ex.B-3 letter dated 04.02.1994, that they were giving their quotation for ore with a manganese content of 20% at Rs.50/- per metric tonne; for ore less than 20%, but above 18%, fraction pro-rata to be deducted; for ore between 20% and 25%, Rs.125/- per metric tonne; above 25% manganese fraction pro-rata; and, if the Corporation was interested, they could lift the entire material lying with the Corporation within the quality parameters as specified in their quotation. By Ex.B-4 quotation dated 24.05.1994, Sri B.Suresh offered to purchase the material at Rs.211/- per metric tonne and requested three months time to lift the stocks. By Ex.B-5 quotation dated 26.05.1994 M/s.S.S. Industries, Hyderabad informed the Corporation that they were offering Rs.199.90 ps. per metric tonne for graded and ungraded ROM manganese on an as is where is basis, exclusive of royalty and

taxes. The Corporation informed M/s.S.S.Industries, by Ex.B-6 letter dated 31.05.1994, to improve their offer from Rs.199.90 ps per metric tonne to Rs.212/- per metric tonne exclusive of royalty and taxes, and to confirm their offer positively by 04.06.1994. Sri B.Suresh was informed, by Ex.B-8 telegram dated 28.06.1994, to reach Hyderabad positively on 02.07.1994 to finalise the sale of manganese ore.

As no reply appears to have been received either from Sri B. Suresh or from M/s. S.S. Industries, the defendant-Corporation, by Ex.B-9 letter dated 08.07.1994, informed M/s.Mid West Iron and Steel Company Limited that they intended to dispose of approximately 1,300 metric tonnes of graded and ungraded ROM manganese ore available at the pithead of their mine at Baguvalasa on an 'as is where is' basis; and the manganese content, of various heaps of the stocks, varied from 12 to 25%. M/s.Mid West Iron and Steel Co. Ltd was requested to send their offer and confirmation by 18.07.1994. Similar letters were addressed by the defendant-Corporation to M/s.Nanubala Agencies vide Ex.B-10 letter dated 08.07.1994, and to M/s.Ferro Alloys Corporation Limited vide Ex.B-11 letter dated 08.07.1994. M/s.Ferro Alloys Corporation Limited informed the defendant-Corporation that they were not interested in purchasing 12 to 24% manganese ore as it was not suitable for their furnace consumption since the manganese content was very low.

The defendant-Corporation, by Ex.B-13 letter dated 08.08.1994, informed M/s.Visakhapatnam Steel Plant that they were sending particulars of the manganese ore available at their Baguvalasa mines; of the lots available, stack Nos.1, 3, 4,6, 8 and 10 were in the form of lumps, and the others were in the form of powder; the stocks at Stack Nos.6 and 8 were analysed at 25.64% manganese content; the stacks at Serial Nos.4 and 10 could be upgraded by sorting; and Visakhapatnam Steel Plant could get the manganese ore, available at their mines, examined and offer a sale price to enable the Corporation to effect supplies to them. In reply M/s.Visakhapatnam Steel Plant, by Ex.B-14 letter dated 06.09.1994, informed the Corporation that they had examined the lots of manganese ore at the Baguvalasa mine, and found that none of the lots met their specifications.

The analysis reports, in Exs.A-57 to A-67, were issued by Essen and Company, during the period from 29.07.1993 to 18.09.1993. The analysis report in Ex.A-57 dated 29.07.1993 shows the manganese content of the sample to be only 21.38%. Likewise, Ex.A-62 test certificate dated 13.08.1993 shows the manganese

content of one of the two lots to be 21.38%. The test certificate in Ex.A-63 dated 13.08.1993 shows that one of the two samples had a manganese content of only 17.10%. The report of Ana Labs, analyzing the ten samples furnished by the defendant-Corporation in January, 1994, shows that, except for two samples, the remaining eight of the ten samples had a manganese content of below 25% and, out of a total quantity of 1292.85 metric tonnes analysed by them, only 130.11 metric tonnes had a manganese content above 25%. Reliance placed by the plaintiff on the purchase orders, wherein the rate per metric tonne, is shown is of no avail as the orders of M/s.Mid-West Iron and Steel Co. Ltd and S.K.Sarawagi and Company, to whom the plaintiff supplied the ore, prescribed a minimum manganese content of above 26%.

The futile attempts of the defendant-Corporation, to dispose of the pit head stock, must also be taken note of. The notification dated 02.05.1994 issued by the defendant-Corporation, inviting bids for the pit head stock of around 1300 metric tonnes, resulted in offers being submitted by Sri B.Suresh and M/s.S.S. Industries at Rs.211/- and Rs.199.90 ps per metric tonne respectively. Both these parties did not, however, lift the ore necessitating the defendant-Corporation having to address letters in this regard to M/s.Mid West Iron and Steel Company Ltd, M/s.Nanubala Agencies, M/s.Ferro Alloys Corporation, and M/s.Visakhapatnam Steel Plant. While M/s.Ferro Alloys Corporation and M/s.Visakhapatnam Steel Plant expressed their disinclination to purchase the pit head stock as it did not meet their specifications, no reply appears to have been received from M/s.Nanubala Agencies and M/s.Mid West Iron and Steel Company Ltd. The quotation given earlier by M/s.S.K.Sarawagi and Company Private Limited, by their letter in Ex.B-3 dated 04.02.1994, was Rs.50/- per metric tonne for manganese content of 20% and, for manganese content between 20% and 25%, at Rs.125/- per metric tonne. The evidence on record does not, however, show to whom the pit head stock was sold by the defendant-Corporation, at what rate or even whether they were sold at all.

Ex.A-26 proceedings dated 20.10.1993 shows that the pit head stock of 1546.60 metric tonnes included manganese ore from bore-hole No.7 of 259.28 metric tonnes; from bore-hole No.5 of 1077.95 metric tonnes; and from bore-hole No.11 of 209.37 metric tonnes. It is only after bore-hole No.5 collapsed on the

intervening night of 02/03.08.1993, that the plaintiff excavated manganese ore of a quantity of 468.65 metric tonnes from bore-hole Nos.7 and 11. In Ex.A-40 letter dated 16.08.1993, the plaintiff stated that they were left with only the working area near bore hole No.7 where the ore was of low grade; it was necessary to identify and develop new areas; and, unless this quantity of high grade ore was achieved, they could not use the low grade material available near bore-hole No.7. It is evident, from Ex.A-40 letter dated 16.08.1993, that the manganese ore available at bore-hole No.7 was of low grade. While the receipts in Exs.X-42 to X-47 do not show the price per metric tonne of ore supplied by the plaintiff to M/s.Mid West Iron and Steel Co. Ltd and M/s.S.K.Sarawagi and Company Private Limited, the price stipulated in the purchase orders placed by these two companies was Rs.425/- and Rs.325/- respectively. The price quoted by M/s.S.K.Sarawagi and Company Private Limited was Rs.100/- less than the price quoted M/s.Mid West Iron and Steel Company Ltd. Curiously M/s.S.K.Sarawagi and Company Private Limited later, by their letter in Ex.B-3 dated 04.02.1994, offered to pay only Rs.125/- per metric tonne for ore with a manganese content of around 25%. M/s.Mid West Iron and Steel Company Ltd did not even choose to reply to the defendant's offer to sell the available pit head stock of 1300 metric tonnes.

As against the pit head stock of 1546.60 metric tonnes of ore, the quantity of ore analysed by M/s.Ana Labs, Hyderabad was 1292.85 metric tonnes, and the quantity of pit head which remained unanalysed was 253.75 metric tonnes. Ex.A-31 dated 11.10.1993 and Ex.A-32 dated 20.10.1993 are the royalty receipts which show that, even according to the plaintiff, the manganese content of 1548 metric tonnes of ore was below 25% and, as even the two companies to whom the plaintiff had supplied ore earlier wanted ore with a manganese content of 26%, it does appear that the plaintiff would not have been able to sell the pit head stock at all. Even if the unanalysed quantity of pit head stock of 253.75 metric tonnes is presumed to have a manganese content above 25%, the total pit head stock with manganese content of above 25% would only be 383.86 metric tonnes (i.e. 253.75 + 130.11). Even if the subsequent offer of Sri B.Suresh and M/s. S.S. Industries of Rs.211/- and Rs.199/- per metric tonne respectively were to be ignored, and the price of Rs.325/- per metric tonne offered by M/s.S.K.Sarawagi and Company Pvt. Ltd in Ex.A-18 and Ex.A-17 record of discussions dated 16.06.1993 and 25.07.1993 respectively is accepted, and the price of the pit head stock of 383.86 metric tonnes, with a manganese content of above 25%, is be fixed at Rs.325/- per metric tonne,

the price of the pit head stock of 383.86 metric tonnes would be Rs.1,24,754.50 ps. Out of the remaining quantity of 1162.74 metric tonnes (ie 1546.60 – 383.86 metric tonnes), the test report of Ana Labs, Hyderabad shows that only 107.88 metric tonnes of ore had a manganese content of between 20% and 25%. As S.K.Sarawagi and Co Ltd, by Ex.B-3 letter dated 04.02.1994, offered Rs.125/- per metric tonne for ore with a manganese content of between 20% and 25%, the value of 107.88 metric tonnes would be Rs.13,485/-. As the remaining quantity of 1054.86 metric tonnes of ore (i.e. 1162.74 metric tonnes - 107.88 metric tonnes) had a manganese content of less than 20%, no compensation can be awarded for the said quantity of 1054.86 metric tonnes of pithead stock of ore.

CONCLUSION:

The plaintiff is entitled for compensation, towards loss of pit head stock of 383.86 metric tonnes for Rs.1,24,754.50 and of 107.88 metric tones for Rs.14,485/- i.e for a total sum of Rs.1,38,239.50 ps. The plaintiff is not entitled for any compensation for the remaining pit head stock of 1054.86 metric tonnes as this quantity of ore had a manganese content of below 20%. In addition to Rs.1,38,239.50 ps payable towards compensation for loss of pit head stock, the plaintiff is also entitled for refund of the security deposit of Rs.16,825/- i.e. for a total sum of Rs.1,55,064.50 ps. The defendant-Corporation is, however, entitled for payment of minimum consideration for two months and 11 days from August, 1993 till 11.10.1993 i.e. for Rs.41,209.68 ps. The plaintiff is, therefore, entitled for a sum of Rs.1,13,854.82 ps (i.e, Rs.1,55,064.50 ps – Rs.41,209.68 ps).

In the result, CCCA No.104 of 2002 is allowed in part, the judgment and decree dated 22.02.2002 passed by the II Senior Civil Judge, City Civil Court, Hyderabad in O.S. No.496 of 1994 is modified, and the defendant-Corporation shall pay Rs.1,13,854.82ps. to the plaintiff with interest at 18% p.a. from the date of the Suit till the date of the decree, and at 6% p.a. from the date of the decree till realization of the aforesaid amount. The appellant is also entitled for proportionate costs. CCCA No.138 of 2003 is dismissed without costs.

(RAMESH RANGANATHAN, J)

(S. RAVI KUMAR, J)

Date: 04.02.2016.

Note:

L.R. copy to be marked.

B/O

MRKR/CS