

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 1363 OF 2022

In the matter of an application under Article 226 of the
Constitution of India.

AFR

M/s. JSW Steel Ltd. & Anr. Petitioners

-Versus-

Indian Bureau of Mines,
Bhubaneswar & Ors. Opp. Parties

For Petitioners : Dr. A.M. Singhvi & Mr. Gopal
Jain, Sr. Advocates along with
M/s. S.S. Mohanty, S. Rout,
N. Agrawal & J. Nirupam,
Advocates

For Opp. Parties : Mr. P.K. Parhi, ASGI along
with Mr. Jateswar Naik, CGC
(O.Ps.1 & 3)

सुप्रसिद्ध न्यायो
Mr. Ashok Kumar Parija,
Advocate General, Odisha
along with Mr. P.P. Mohanty,
Addl. Govt. Advocate
(O.P.2)

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MISS JUSTICE SAVITRI RATHO**

Date of hearing: 07.03.2022 : Date of Judgment: 16.03.2022

DR. B.R. SARANGI, J. The petitioner no.1, a company registered under the Indian Companies Act, 1956, having its registered Office at JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai and one of its offices at Barbil in the district of Keonjhar, Odisha, has filed this writ petition through its authorized signatory- petitioner no.2 seeking following reliefs:

- a) *Issue a writ of Certiorari of any other appropriate writ, order or direction setting aside and quashing the impugned decision dated 12.01.2022 issued by the Opposite party No. 1 revising the Average Sale Price for the month of September and October, 2021 for the State of Odisha;*
- b) *Issue an appropriate writ directing the Opposite Parties to not take any decision to revise or determine or publish the Average Selling Price (ASP) excluding the ex-mine prices at domestic sale transactions of the lessee(Petitioner herein);*
- c) *Issue a writ of Mandamus or any other appropriate writ directing the Opposite Party No 3 to issue an office memorandum of guidelines on interpretation of Rule 45(8) (III) and Rule 45(8) (IV) of the MCDR, 2017;*
- d) *Issue a writ of Certiorari or any other appropriate writ directing the Opposite Parties to furnish the record of the file pertaining to revision or the determination of the Average Selling Price (ASP) for the State of Odisha; and*
- e) *As a consequential relief; issue a writ of Certiorari or any other appropriate writ, order or direction setting aside and quashing the Notices dated 16.12.2021 issued by the Opposite Party No. 1 to the Petitioner in respect of its Jajang Iron Ore mine and the Nuagaon Iron Ore mine in the State of Odisha;*

Pass any other or further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case to meet the ends of justice."

2. The factual matrix of the case, in brief, is that opposite party no.1-the Indian Bureau of Mines, which was established in the year 1948, as a multidisciplinary governmental organization under the Department of Mines, Ministry of Mines, Government of India, is engaged in the promotion of conservation, scientific development of mineral resources and protection of environment in mines other than coal, petroleum and natural gas, atomic minerals and minor minerals. Opposite party no.1 is also tasked with maintaining the National Mineral Inventory, and approving mining plans, closure of operations and the conservation of mineral material, as the national regulator for State Governments.

2.1 Opposite party no.2-State of Odisha represented through the Directorate of Mines, is functioning under the administrative control of Steel & Mines Department of Odisha. The major functions of the Directorate are- administration of mines & minerals, processing of mineral concession applications, collection

of mineral revenue, prevention & control of illegal mining & smuggling of minerals, enforcement of statutory provisions for exploration of minerals, peripheral development of mining areas, chemical analysis of ores & minerals etc. As such, opposite party no.2 is responsible for implementation of the ASP (Average Sale Price) published by opposite party no.1 and collection of royalties and other contributions from mining companies based on the same.

2.2 Opposite party no.3 is the Ministry of Mines, Government of India, which is the principal organ of the Union of India for legislation, policy formulation and administration of mines and minerals in the country. It has also the duty to issue clarifications and guidelines on the interpretation of and manner of implementation of various mining laws, including rules and regulations, which will have bearing on mining operations and transactions across the country.

2.3 Pursuant to reforms initiated by the Government of India in July, 1991 in the fiscal,

industrial and trade regimes in force in the country, the National Mineral Policy was announced in March, 1993. The National Mineral Policy recognized the need for encouraging private investment and for attracting state of the art technology in the mineral sector paving the wave of private sector in the exploration and mining activities in India. It was in furtherance of the objectives of the said National Mineral Policy, the Mines and Minerals (Development and Regulation) Act, 1997 (for short “MMDR Act, 1957”), the Mineral Concession Rules, 1960 (for short “MCR, 1960”) and the Mineral Conservation and Development Rules, 1988 (for short “MCDR, 1988”), having been framed under the MMDR Act, 1957, have been modified from time to time to deliver a fair concession regime for mining development in India and to invite private sector investment in the country. With the aforementioned objectives of ensuring grater private sector participation in the mining sector, opposite party no.3 introduced (1) Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 (for short “MCR, 2016”), which, unlike the

earlier MCR, provides for mechanisms for grant of concessions through auction, transfer of concessions as well as saving clauses to protect the rights of mineral concession licensees under the old regime, (2) The Mineral Conservation and Development Rules, 2017 (MCDR, 2017) which deals with the rights of the reconnaissance or prospecting licensees or mining leaseholders and (3) Mineral Auction (Amendment) Rules, 2017, which provides for greater flexibility in the auction process to enhance participation in auctions and ensuring that such auctions are successful.

2.4 In this backdrop of the development of law, the Government of Odisha, in exercise of power conferred under Section 10B of the MMDR Act, 1957 read with Mineral (Auction) Rules, 2015, issued a Notice Inviting Tender ("NIT") for auction of mining lease for iron ore and manganese minerals, the lease period of which was to expire on 31.03.2020 in terms of Section 8A(6) of the MMDR Act, 1957. The NIT invited bids for 12 mineral blocks of iron ore, two mineral blocks of

manganese and 6 mineral blocks for iron ore and manganese. These blocks included Jajang Iron Ore block, Nuagaon Iron Ore block, Narayanposhi Iron Ore and Manganese block and the Gonua Iron Ore block. The State Government issued detailed tender documents for each individual mining block and also published information regarding Mine Block Summary, which contains the extracts from the Geological Study Report for each mining block on the e-auction platform, and the same was accessible to all bidders. The e-auction of the said blocks was conducted by the Government in accordance with the aforesaid NIT on various dates. In the said e-auction, JSW Steel Ltd., the petitioner no.1 herein, submitted the highest final offer for Jajang Iron Ore block, Nuagaon Iron Ore block, Narayanposhi Iron Ore and Manganese block and the Gonua Iron Ore block and was declared as the 'Preferred Bidder' for grant of the aforementioned mining blocks by the Director of Mines, Odisha. Out of the said four blocks, Jajang and Nuagaon are non-captive mines and Narayanposhi and Gonua are captive mines. In March, 2020, in pursuance

of the deposit of the first installment of 10% upfront payment, the Government of Odisha issued Letters of Intent to the petitioner-company in respect of the aforementioned mining blocks in terms of Rule 10 of the Mineral (Auction) Rules, 2015.

2.5 The MCR, 2016 was amended on 20.03.2020 by inserting a new Rule 12-A, which provided for imposition of additional conditions for commencement and continuation for production as per Section 4B of the MMDR Act, 1957. The newly inserted Rule 12A further provided that during the first two years, from the date of the execution of a new lease deed, the holder of a mining lease, to whom the order of vesting of the rights, approvals, clearances, licenses and the like have been issued under Section 8B of the MMDR Act, 1957, shall maintain such level of production so as to ensure minimum dispatch of eighty percent of the average of the annual production of two immediately preceding years on pro rata basis, failing which appropriate actions in accordance with the Mine Development and Production

Agreement (“MDPA”) shall be initiated. In May, 2020, the vesting orders were issued by the State Government in favour of the petitioner-company in respect of the mining blocks, for which it was the preferred bidder, in terms of Rule 9(A)(1) of the MCR, 2016.

2.6. On 24.06.2020, after payment of the second instalment of the upfront payment and furnishing of the Performance Bank Guarantee, the petitioner-company was declared as the ‘Successful Bidder’. As a consequence thereof, MDPA was executed between the State Government and the petitioner-company on 25.06.2020. In terms of the MDPA, after payment of third instalment of the upfront payment, the State of Odisha executed the mining lease deeds with the petitioner-company in respect of Jajang Iron Ore block and Nuagaon Iron Ore block on 27.06.2020. Mining Operations in the said mines were commenced on 01.07.2020. Thereby, in view of provisions contained in Rule 12A(1) of MCR, 2016, the petitioner-company was to comply with the production and dispatch level in

respect of Jajang and Nuagaon Mines. At the end of the first year of mining operations, the petitioner-company was imposed a penalty of Rs.696 crores on 07.09.2021 towards shortfall in meeting the minimum dispatch targets from Jajang mines. The same was challenged before this Court in W.P.(C) No. 28232 of 2021, wherein the demand notice was directed to be kept in abeyance till the disposal of the writ petition, vide order dated 27.09.2021. In view of the plummeting demand of iron ore in the international market from July, 2021, there was consequent fall in international prices of iron ore and thereby, there was a consequent decline in the exports of iron ore from the State of Odisha leading to an insignificant demand, particularly of low grade ore.

2.7. In view of dwindling demand of iron ore in the international market and the consequent fall in international prices, the petitioner-company was compelled to undertake sale of its production at the price discovered at the e-auction so as to achieve the minimum dispatch as mandated under Rule 12A of the

MCR, 2016 and to avoid hefty penalties under the MDPA. In order to ensure that the prices at which the iron ore of various grades is sold in a transparent manner, the petitioner-company started conducting e-auctions through the MSTC e-commerce platform of the Government of India. As such, the petitioner-company conducted the said auctions on eleven occasions between 24.08.2021 and 12.12.2021 for iron ore from Jajang Mines. The price so discovered in the e-auction for the iron ore sold from Jajang Mines was also used for the sale of comparable grades of iron ore sold from Nuagaon Mines. As per requirements of Rule-45(7) of the MCDR, 2017 read with Form F-1, the petitioner-company has been duly submitting its monthly returns to opposite party no.1 and providing rectification and explanation as and when required in accordance with guidelines formulated by Indian Bureau of Mines, Nagpur (central body) and published by opposite party no.3.

2.8. On 16.12.2021, opposite party no.1 issued a violation-cum-show cause notice to the petitioner-company in respect of its Jajang Iron Ore Mines and Nuagaon Iron Ore Mines in the State of Odisha for alleged violations of Rule 45(7) and Rule 45(8)(III) of the MCDR, 2017 directing to give reasons within 30 days from the date of issue of the notice as to (a) why all mining operations and dispatches of the Mines should be not stopped; (b) why the petitioner should not be prosecuted under the rules; and (c) recommend termination of the mining lease for suppression or misrepresentation of information indicates abetment or connivance of illegal mining.

2.9 When the matter thus stood, opposite party no.1 on the very same day, vide letter dated 16.12.2021 addressed to the Director (Statistics) and In-charge MMS Division of the Indian Bureau of Mines, referring to the sale of various grades of iron ore by the petitioner-company from its iron ore mines at Jajang and Nuagaon, had recommended that the ASP of the State of Odisha

may be calculated excluding the ex-mine price of the above mines as the same were allegedly not on “arm’s length basis”. In response to the violation-cum-show cause notice dated 16.12.2021, the petitioner-company submitted its reply on 18.12.2021 in terms of Rule 45(7A) of the MCDR, 2017 addressing to CCOM (MDRD) of the Indian Bureau of Mines, Nagpur, with a request that unless and until the said reply is considered, no decision may be taken to revise the ASP already published excluding the domestic sale transactions of the lessee (petitioner-company herein) under the pretext that the same were not qualifying sale transactions under Rule 45(8)(III) of the MCDR, 2017. In addition to the same, the petitioner-company furnished further reply on 27.12.2021 stating, inter alia, that the notices do not fulfil the statutory conditions for issuance thereof and ex-facie do not show any violation or other cause of action, for which action is contemplated therein. Opposite party no.1 published the ASP for September, 2021 and October, 2021 on 30.11.2021 and 29.12.2021 respectively and marked ASP for Iron Ore for the State of

Odisha as “P” or “Provisional” for few grades, for which the published ASP was lower by more than 20% from the published ASP of August, 2021. Instead of taking any decision on the reply of the petitioner-company to the notice of show-cause, opposite party no.1 proceeded to exclude the ex-mines price of the petitioner-company for the period in question and calculated and published the ASP for the State.

2.10 At that point of time, the petitioner-company approached Delhi High Court by filing W.P. No.845 of 2022 on 12.01.2021 challenging the notice and seeking relief against issuance and implementation of final ASP for September, 2021, October, 2021 and November, 2021 excluding the ex-mine price of the petitioner-company's mines, but subsequently the said writ petition was withdrawn on 17.01.2021 with a liberty to proceed before this Court.

2.11 While deciding the replies dated 18.12.2021 and 27.12.2021 given by the petitioner-company to the notice of show-cause, opposite party no.1 proceeded to

declare and publish the ASP for the months of September, 2021 and October, 2021 excluding the ex mine price of the petitioner-company at 9 PM on 12.01.2022. Hence this writ petition.

3. Dr. A.M. Singhvi and Mr. G. Jain, learned Senior Counsel appearing along with Mr. S.S. Mohanty, learned counsel for the petitioners urged before this Court that the impugned decision dated 12.01.2022, whereby the opposite party no.1 has proceeded to publish the revised/final ASP for September, 2021 and October, 2021 excluding the ex-mine prices of the petitioner-company, suffers from illegality, failure to follow due process of law, principle of natural justice, jurisdictional error and predetermined mindset, and thereby violates Articles 14 and 19 (i) (g) of the Constitution of India. He emphatically contended that the impugned decision and publication of ASP was issued without considering the replies dated 18.12.2021 and 27.12.2021 submitted by the petitioner-company, pursuant to show-cause notice dated 16.10.2021, and

without passing any specific order thereon. It is further contended that the said fact has not been disputed by opposite party no.1-IBM in its counter affidavit. Interestingly, the decision to exclude ex-mine prices was made on the very same day, when the show cause notice was issued by opposite party no.1-IBM, i.e., on 16.10.2021. On the date of issuance of show cause notice, the opposite party no.1-IBM wrote a letter to the Director (Statistics) and in-charge MMS Division of the IBM, recommending that ASP of the State of Odisha may be calculated excluding the ex-mine price of the mines, namely, Jajang Iron Ore and Nuagaon Iron Ore, which itself shows predetermined mindset of IBM and renders the entire exercise an empty formality.

It is further contended that the petitioner-company's sales with related parties have been executed at prices discovered through transparent, fair and competitive e-auction and applied uniformly for both related and unrelated parties and are therefore at arm's length. It is further contended that the petitioner-

company conducted 11 auctions through MSTC between August, 2021 and December, 2021 for carrying out price discovery, pursuant to which 50 players participated, of which only three are related parties, who were successful bidders also only on three occasions and three related parties got only a small quantity of 667550 MT, out of the total sold quantity of 2654400 MT, which is approximately 25%. Traders were allowed to participate only in one auction and even in the same, they were permitted to participate for end-use (not for resale). Direct sales with traders who in turn have sold to related parties are at comparable auction discovered price and therefore at arm's length. Hence all sales of the petitioner-company in September, October and November, 2021 with both related parties and traders were at prices equal to or more than the price determined at e-auction and applied for transactions with unrelated parties.

It is further urged that Rule 45(8)(b)(III) of MCDR, 2017 permits sales to related parties, if done on

arm's length basis, and the said rule lays down a twin-test and prescribes that while computing the ASP, the opposite party no.1-IBM should not recognize a transaction, where the sale has occurred between related parties and where the same is not on arm's length basis. It is contended that Section 188(1) 4th proviso to the Companies Act, 2013 defines the expression "arm's length transaction" as "a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest". If the petitioner-company's transactions are to be taken up, the sale-purchase transactions for iron ore between the petitioner-company and the related party end users having steel manufacturing plant are transactions necessarily in the 'ordinary course of business'. It is further contended that Rule 45(8) of the MCDR, 2017 framed later in time i.e. notified on 27.01.2017 and thus necessarily and mandatorily informs the exercise of computation of ASP under Rule 42 of MCR, 2016 notified on 04.03.2016. Thereby, rule of construction is well settled that the later enactment prevails over an

earlier one. Therefore, Rule 42(2)(c) of MCR, 2016 includes the phrase “arm’s length basis”, the said words must be given meaning to, failing which they would be rendered otiose. Therefore, any possible ambiguity in the reading of the clause, gets resolved when read harmoniously with Rule 45(8)(b)(III) of the MCDR, 2017 and a harmonious construction of the two provisions would indicate that related party sales cannot per se or ipso facto be excluded by opposite party no.1-IBM in computation of ASP without examining whether such related party sales satisfy the arm’s length test or not.

It is further contended that Rule 45(8)(b) of MCDR, 2017 replaced the earlier Rule 45(8)(b) of MCDR, 1988 which provided that sales with related parties would not be recognized as a sale at all, whereas the present Rule 45(8)(b) of MCDR, 2017 introduces the nuance of arms length, thereby necessitating an application of mind as to whether these sales with related parties are at arm’s length or not. It is further contended that the impugned ASPs published by the

opposite party no.1-IBM do not reflect the true market price, particularly for low grade fines (below 60% FE grade) where the international market slashing so far as iron ore is concerned. Thereby, the ASP fixed by the IBM is not sensitive to the drastic reduction in market price. As a consequence thereof, the volume of mineral intended to be sold affects the price of the mineral and higher volume corresponds to low price and as such, does not correctly indicate the true market price and auction floor price has to correspond to the market price to get bidders/buyers.

It is further contended that exclusion of petitioner's ex-mines prices would have a significant impact on the overall ASP, when the petitioner had dispatched 71% of the total low grade iron ore from the merchant mines in the entire State of Odisha during that period. It is further contended that the IBM has created an illusion of higher prices resulting in putting the petitioner-company to sustain loss and cause grater hardship for its survival.

To substantiate his contentions, he has relied upon ***Oryx Fisheries Private Limited v. Union of India***, (2010) 13 SCC 427; ***K.I. Shephard v. Union of India***, (1987) 4 SCC 431; ***DIT (International Taxation, Mumbai) v. Morgan Stanley & Co.***, (2007) 7 SSC 1; ***Commissioner of Customs, Mumbai v. Clariant (India) Ltd., Worli***, (2007) 12 SCC 166; ***Solidaire India Ltd. V. Fairgrowth Financial Services***, (2001) 3 SCC 71; ***Union of India v. Popular Construction Co.***, (2001) 8 SCC 470 and ***State of Rajasthan v. Gopi Kishan Sen***, 1993 Supp(I) SCC 522.

4. Per contra, Mr. A.K. Parija, learned Advocate General of Odisha appearing along with Mr. P.P. Mohanty, learned Additional Government Advocate for opposite party no.2 vehemently refuted the contentions raised by the learned Sr. Advocates appearing for the petitioner-company and contended that the price slash given by the petitioner-company, with reference to the document annexed as Annexure-A/2, the ex-mine price of iron ore reported by different bidders from July, 2021

to December, 2021 in monthly returns filed by opposite party no.1, is not a realistic price slash in comparison to other similarly situated leaseholders, and further the document under Annexure-A/1 filed by opposite party no.1-IBM i.e. mine-wise, grade-wise domestic sale reported in monthly return for the month of September, 2021 clearly indicates that the sale had been made to self, though the initial sale, may be at some stages, indicates to be made to the traders, but ultimately the dispatch was made to the traders “end users” and the “end users” are none else but the petitioner-company. Though they are named as different companies, but said companies are acquired by the petitioner-company. As such, it is not applicable to the petitioner, rather it is a camouflaged manner of sale made by the petitioner-company to self by the traders and, as such, it shows trader transaction and effectively the purpose of the Act and Rules have not been adhered to in letter and spirit.

It is further contended that the petitioner-company has tried to club two issues, namely, fixation of

price by opposite party no.1-IBM, and secondly with regard to non-compliance of the principle of natural justice, pursuant to show cause notice issued for non-compliance of the statutory provisions contained in the Rules itself. It is also contended that the argument advanced by learned Senior Counsel appearing for the petitioner-company, that there is non-compliance of the principle of natural justice, pursuant to show-cause notice dated 16.12.2021, to which the petitioner-company replied on 18.12.2021 and 27.12.2021, has nothing to do with the fixation of price and both run separately. As such, there is no provision under the Act and Rules to give any hearing for fixation of price. It is emphatically argued before this Court that if the price, which has been fixed, will be taken into consideration, then State will lose highest revenue which could have been collected from the mining resources of the State. As a consequence thereof, it affects the State revenue and, more so, if the petitioner-company is aggrieved by the fixation of such price, an alternative statutory remedy is available under Rule-161 of MCDR, 2017. Thereby, the

writ petition is not maintainable and liable to be dismissed at the threshold.

It is also contended that the prayer, as made in the writ petition, on the face of it, is purely confusing. As such, the petitioner seeks to set aside and quash the impugned decision dated 12.01.2022 issued by opposite party no.1 revising the ASP for the month of September and October, 2021 for the State of Odisha, but no such document is available on record in any manner. Therefore, the claim made by the petitioner to quash the said decision cannot sustain. It is further contended that seeking direction not to take any decision to revise and determine the average different price, excluding ASP, is a domestic transaction of the lessee. As such, the petitioner-company cannot claim such relief before this Court. It is further contended that fixation of price is within complete domain of opposite party no.1-IBM, to which the petitioner, by way of filing writ petition, cannot regulate in any manner, as similarly situated many other leaseholders have not challenged such

action knowing fully well the jurisdiction of this Court in such issues. It is also further contended that the relief sought before this Court, for direction to issue office memorandum on interpretation or implementation of Rule 45 (8)(III) and Rule 45 (8)(IV) of the MCDR, 2017, cannot be granted, as the Statute itself is very clear in that regard. So far as production of records is concerned, it is the petitioner, who has to furnish all documents before the Court and, thereby, the production of records pertaining to ASP for the State of Odisha is an absolutely misconceived relief sought before this Court. It is further contended that in one hand the argument has been advanced that pursuant to show-cause notice dated 16.12.2021 issued by opposite party no.1-IBM in respect of Jajang Iron Ore Mines and Nuagaon Iron Ore Mines in the State of Odisha, the petitioner-company has filed replies on 18.12.2021 and 27.12.2021 seeking compliance of the principle of natural justice, and on the other hand, claims for quashing of such notice, which is an absolutely

misconceived one. Thereby, he seeks for dismissal of the writ petition.

5. Mr. P.K. Parhi, learned Assistant Solicitor General of India appearing along with Mr. J. Naik, learned Central Government Counsel for opposite parties no.1 & 3, referring to counter affidavit, contended that the replies dated 18.12.2021 and 27.12.2021 submitted by the petitioner-company, pursuant to notice of show-cause issued on 16.12.2021, are under consideration and, as such, publication of ASP is all together a different process itself as per laid down procedure. It is also contended that the publication of final ASP is without consideration of reply to show-cause, is not correct, as the action of opposite party no.1-IBM is still under consideration. Thereby, the relief sought by the petitioner cannot be granted. He has supported the argument advanced by learned Advocate General, Odisha appearing for opposite party no.2 and also laid emphasis on the fact that the claim of the petitioner-company for compliance of the principle of natural

justice is all together a different issue than that of fixation of ASP, and both are proceeded in different procedure of law. It is further contended that since there is alternative remedy available under the Statute, instead of availing the same, the petitioner could not have approached this Court by filing this writ petition. As a consequence thereof, the writ petition has to be dismissed at its threshold.

6. This Court heard Dr. A.M. Singhvi and Mr. G. Jain, learned Senior Advocates appearing along with Mr. S.S. Mohanty, learned counsel for the petitioners; Mr. P.K. Parhi, learned Assistant Solicitor General of India appearing along with Mr. Jateswar Naik, learned Central Government Counsel for opposite parties no.1 & 3-Indian Bureau of Mines; and Mr. A.K. Parija, learned Advocate General of Odisha along with Mr. P.P. Mohanty, learned Additional Government Advocate for the opposite party-State, by hybrid mode. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ

petition is being disposed of finally at the stage of admission.

7. On the basis of the undisputed factual matrix, as delineated above, the following issues emerge for consideration:-

- (i) Whether the reliefs sought as per the prayer made by the petitioners can be granted?
- (ii) Whether the principles of natural justice are required to be complied with or not for alleged violation of Rule 45(7) and Rule 45(8)(III) of the MCDR, 2017?
- (iii) Whether the fixation of price and issuance of ASP is legally tenable or not?

8. **Issue no.(i)**
Whether the reliefs sought as per the prayer made by the petitioners can be granted?

At the outset, Mr. A.K. Parija, learned Advocate General of Odisha raised preliminary objection with regard to the prayer made in the writ petition and contended that the relief sought cannot be granted to the petitioners and the writ petition should be dismissed in absence of any specific relief sought. He lays emphasis on the prayer no.(a) of the writ petition wherein the petitioners have prayed for direction to set

aside or quash the impugned decision dated 12.01.2022 issued by opposite party no.1 revising the ASP for the months of September and October, 2021 for the State of Odisha. As such, on perusal of the records, no such document has been annexed to the writ petition, therefore, the prayer made for quashing of such document, is absolutely misconceived one. But fact remains in paragraph-xxiii of the writ petition, the petitioners have pleaded as follows:

“In Complete disregard of and without considering and /or disposing of the reply furnished by the petitioner to the Notices and the letter dated 18.12.2021 addressed by the petitioner to the CCOM (MDRD) OF THE Indian Bureau of Mines, Nagpur and with the sole purpose to circumvent the due process of law, the Opposite party no. 1 proceed to declare and publish the ASP for the months of September, 2021 and October, 2021 excluding the ex-mine price of the Petitioner at 9.00PM on 12.01.2022, i.e. after the filing and service of advance copy of the Writ Petition (C) No.845 of 2022, solely with the intention to circumvent the due process of law.”

In view of such pleadings made available on record, the claim has been made, that as per the decision taken on 12.01.2022, opposite party no.1-IBM proceeded to decide and publish the ASP for the month of September, 2021 and October, 2021, excluding ex-mine price of the petitioner, at 9 PM on 12.01.2022. Therefore, fixation of

such ASP has been made, pursuant to the decision taken on 12.01.2022, which is the subject matter of the dispute in the case itself. In prayer (b), it has been sought to direct the opposite parties not to take any decision to revise or determine or publish the ASP, excluding the ex-mine price, at domestic sale transactions of the lessee. It is contended that since such decision has not been placed on record, merely averring the same in paragraph-xxiii of the writ petition, the relief cannot be granted to the petitioners.

9. In **Charanjitlal v. Union of India**, AIR 1951 SC 41 : 1950 SCR 869, the apex Court held that a word about prayer for a particular writ in the petition. Courts have very wide discretion in the matter of framing their writs to suit the exigencies of particular cases, and an application cannot be thrown out simply on the ground that the proper writ or direction has not been prayed for.

10. In **Satyanarain v. District Engineer, P.W.D.**, AIR 1962 SC 1161 : (1962) Supp.3 SCR 105, wherein the apex Court held that appropriate relief may

be granted due to changed circumstances and because of the prayer for grant of any other relief in the petition. But that has got restriction to the extent that the same principle would not apply in case where the cause of action which had brought the petitioner to the court no longer subsisted.

11. In ***Life Insurance Corporation v. Sunil Balo Kumar***, AIR 1964 SC 847 : (1964) 5 SCR 528, the apex Court held that a party is not disentitled to claim the same relief on a basis alternative to one pleaded in his petition.

12. In ***Chandigarh Admn. v. Laxman Roller Flour Mills (P) Ltd.***, (1988) 8 SCC 326, the apex Court held that unless the allegations are made in the writ petition and a relief to that effect is also prayed for in the writ petition, the High Court is not justified in issuing any order in excess of the relief prayed for in the writ petition. In the absence of pleading and prayer in the writ petition, the High Court fell in error in issuing directions to the appellant to issue completion certificate

to the writ petitioner, when the challenge in the writ petition was for quashing cancellation of lease deed and dispossession from the plot by the Chandigarh administration.

13. In the present case, even though the petitioners pleaded in paragraph-Xiii of the writ petition and made prayer in Clause-(a) (b) with regard to quashing of the decision taken on 12.01.2022, but nothing has been placed on record about such decision. Therefore, even if prayer has not been specifically made, but in view of the pleadings available on record, the petitioners cannot be disentitled to seek relief in the High Court in exercise of power under Article 226 of the Constitution of India and, as such, the High Court can mould the relief sought by the petitioners.

14. “Moulding of relief” principle was recognized by the Supreme Court in **Pasupuleti Venkateswarlu v. The Motor & General Traders**, AIR 1975 SC 1709. It was observed therein that though the right to relief must be judged to exist as on the date a suitor institutes the

legal proceeding, the principle that procedure is the handmaid and not the mistress of the judicial process is also to be noted. Justice **VR Krishna Iyer** observed:

"If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief for the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice--subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial Court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the court can, and in many cases must, take cautious cognizance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed.

15. In **Ramesh Kumar v. Kesho Ram**, AIR 1992 SC 700, the Supreme Court again following this principle, i.e. "moulding of relief", observed as follows:

"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief."

16. In **Sheshambal (dead) through LRs v. Chelur Corporation Chelur Building**, (2010) 3 SCC 470, the apex Court laid down the conditions in which the relief can be moulded:

“(i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted;

(ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and

(iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.”

17. In **Samir Narain Bhojwani v. Aurora Properties and Investments**, (2018) 17 SCC 203 the apex Court observed that principle of moulding of relief could at best be resorted to at the time of consideration of final relief in the main suit and not at an interlocutory stage.

18. In **Premalata Panda v. State of Odisha**, 2015 (II) OLR 214, relying upon **State of Rajasthan v. M/s. Hindustan Sugar Mills Ltd.**, AIR 1988 SC 1621 : (1988) 3 SCC 449 where the apex Court held that the High Court which was exercising high prerogative

jurisdiction under Article 226 could have moulded the relief in a just and fair manner as required by the demands of the situation, this Court, in exercise of such power under Article 226 of the Constitution of India even though no specific prayer was made in the writ petition, taking into consideration the facts and circumstances of the case, was inclined to mould the relief and passed order/direction as deemed fit and proper as prayed for by the learned counsel for the petitioner in the writ petition.

19. In view of the law laid down by the apex Court, so far as “moulding of relief” is concerned, this Court is of the considered view that even if there is no such specific prayer made in the writ application, this Court can grant such relief, as has been advanced before this Court in course of hearing of the matter, at the final stage by “moulding the relief”.

Accordingly, the preliminary objection raised by learned Advocate General, Odisha is answered in favour of the petitioners.

20. **Issue no.(ii)**

Whether the principles of natural justice are required to be complied with or not for alleged violation of Rule 45(7) and Rule 45(8)(III) of the MCDR, 2017?

Before delving into this issue, the relevant provisions of the Acts and the Rules are required to be referred to:-

(a) **Mines and Minerals (Development and Regulation) Act, 1957** (“MMDR Act, 1957” in short)

“9. Royalties in respect of mining leases.—(1) *The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease` or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.*

(2) *The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.*

(2A) *The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972 (56 of 1972) shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month.*

(3) *The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with*

effect from such date as may be specified in the notification:

Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years."

(b). **Minerals (Other Than Atomic and Hydrocarbon Energy Minerals) Concession Rules 2016, ("MCR 2016" in short)**

CHAPTER XII

MINERALS VALUATION

38. Sale Value. - Sale value is the gross amount payable by the purchaser as indicated in the sale invoice where the sale transaction is on an arms' length basis and the price is the sole consideration for the sale, excluding taxes, if any.

Explanation – For the purpose of computing sale value no deduction from the gross amount will be made in respect of royalty, payments to the District Mineral Foundation and payments to the National Mineral Exploration Trust.

39. Payment of royalty. - (1) in case processing of run-of-mine is carried out within the leased area, then royalty shall be chargeable on the processed mineral removed from the leased area.

(2) In case run-of-mine is removed from the leased area to a processing plant which is located outside the leased area, then royalty shall be chargeable on the unprocessed run-of-mine and not on the processed product.

(3) Wherever the Act specifies that the royalty in respect of any mineral is to be paid on an Ad valorem basis, the royalty shall be calculated at the specified percentage of the average sale price of such mineral grade/ concentrate, for the month of removal / consumption, as published by the Indian Bureau of Mines.

(4) Wherever the Act specifies that the royalty in respect of any mineral is to be paid based on London Metal Exchange or London Bullion Market Association price, the royalty shall be calculated at the specified percentage of the average sale price of the metal for the month as published by the Indian Bureau of Mines, for the metal contained in the ore removed or the total by-product metal actually

produced, as the case may be, of such mineral for the month.

(5) Wherever the Act specifies that the royalty of any mineral is to be paid on tonnage basis, the royalty shall be calculated as product of mineral removed or consumed from the lease area and the specified rate of royalty.

40. Provisional Assessment and Adjustment. -

(1) At the time of removal or consumption of mineral from the mining lease area, the lessee shall calculate the amount of Royalty, payment to the District Mineral Foundation, payment to the National Mineral Exploration Trust, based on the latest available average sale price of the said mineral grade and pay the same to the Government as provisional payment for the same.

(2) After the publication of the Average Sale Price of the Minerals for the month by the Indian Bureau of Mines, due adjustment of the actual amounts payable against the provisional payment may be made:

Provided that if for a particular mineral grade / concentrate, the average sale price for a State for a particular month is not published by the Indian Bureau of Mines, the last available information published for that mineral grade / concentrate for that particular State by the Indian Bureau of Mines in the last six months previous to the month for which assessment is done shall be used, failing which the latest information for All India for the mineral grade / concentrate, shall be used.

41. XXX XXX XXX

42. Computation of average sale price. - (1) The ex-mine price shall be used to compute average sale price of mineral grade/ concentrate.

(2) The ex-mine price of mineral grade or concentrate shall be: -

(a) where export has occurred, the free-on-board (F.O.B) price of the mineral less the actual expenditure incurred beyond the mining lease area towards transportation charges by road, loading and unloading charges, railway freight (if applicable), port handling charges/export duty, charges for sampling and analysis, rent for the plot at the stocking yard, handling charges in port,

charges for stevedoring and trimming, any other incidental charges incurred outside the mining lease area as notified by the Indian Bureau of Mines from time-to-time, divided by the total quantity exported.

(b) where domestic sale has occurred, sale value of the mineral less the actual expenditure incurred towards transportation, loading, unloading, rent for the plot at the stocking yard, charges for sampling and analysis and any other charges beyond mining lease area as notified by the Indian Bureau of Mines from time-to-time, divided by the total quantity sold.

(c) where sale has occurred, between related parties and/or where the sale is not on arms' length basis, then such sale shall not be recognized as a sale for the purpose of this rule and in such case, sub-clause (d) shall be applicable.

(d) where sale has not occurred, the average sale price published monthly by the Indian Bureau of Mines for that mineral grade / concentrate for a particular State:

Provided that if for a particular mineral grade / concentrate, the information for a State for a particular month is not published by the Indian Bureau of Mines, the last available information published for that mineral grade / concentrate for that particular State by the Indian Bureau of Mines in the last six months previous to the reporting month shall be used, failing which the latest information for All India for the mineral grade / concentrate, shall be used.

(3) The average sale price of any mineral grade/concentrate in respect of a month shall be the weighted average of the ex-mine prices of the non-captive mines, computed in accordance with the above provisions, the weight being the quantity dispatched from the mining lease area of mineral grade / concentrate relevant to each ex-mine price.

43. Publication of average sale price. - The Indian Bureau of Mines shall publish the average sale price of each mineral grade/concentrate removed from the mining leases in a month in a State within 45 days from the due date for filing the monthly returns as required under the Mineral Concession Development Rules, 1988.

44. XXX XXX XXX

45. Formula for calculating average sale price for metallurgical grade Bauxite to be used in alumina and aluminium extraction, Limestone, Tungsten. – (1) The State Government shall arrive at the average sale price of metallurgical Bauxite in the following manner:

Average sale Price = $52.9/100 \times \text{Percentage of Al}_2\text{O}_3 \text{ in bauxite on dry basis} \times \text{Average aluminium price in Indian rupee for the month as published by IBM} \times \text{Conservation factor as notified by the Central Government.}$

(2) The following procedure shall be used by IBM for publishing the average sale price of Limestone:

(a) Weighted average of non-captive prices computed for all India for the month; or

(b) 115% of the weighted average captive prices for the State for the month, whichever is higher.

(3) The following procedure be used by IBM for publishing the average sale price of Tungsten concentrate:

Average = Lowest price of WO_3 per X Average of RBI reference rates
Sale Price metric tonne for the month for the month

+

Highest price of WO_3 per
metric tonne for the month

2

The monthly prices available in Mineral Industry Surveys of USGS shall be taken by the IBM for compiling the average sale price of tungsten concentrate.

(c) **Mineral Conservation and Development Rules, 2017 (“MCDR 2017” in short).**

CHAPTER VI

NOTICES AND RETURNS

45. Monthly and annual returns. – (1) The holder of a mining lease, or any person or company engaged in trading or storage or end-use or export of minerals mined in the country, shall cause himself to be registered online with the Indian Bureau of Mines as per application specified in Form K of the Schedule and the registration number so allotted by the Indian

Bureau of Mines shall be used for all purposes of online reporting and correspondence connected therewith.

(2) For the purpose of registration under sub-rule (1), the holder of a mining lease, or any person or company engaged in trading or storage or end-use or export of minerals, shall apply for registration in electronic form, within one month from the date of registration of the lease deed or before the commencement of trading operation or storage or end-use or export of minerals, as the case may be.

(3) The Indian Bureau of Mines shall allot and record the registration number in the register referred to in sub-rule (4).

(4) The Indian Bureau of Mines shall maintain an online register giving details of the holder of a mining lease, or any person or company engaged in trading or storage or end-use or export of minerals, as the case may be, as registered under the provisions of these rules, which shall be made available to the general public for inspection on demand, and also posted on the website of the Indian Bureau of Mines.

(5) The holder of a mining lease shall submit online returns in respect of each mine to the Regional Controller or any other authorised official of the Indian Bureau of Mines in the following manner, namely:-

(a) a daily return which shall be submitted through in electronic form through the application developed by the Indian Bureau of Mines, by 1800 hours of the third day following the day of reporting, which may be edited before the time deadline provided in this regard;

(b) a monthly return which shall be submitted before the tenth day of every month in respect of the preceding month in electronic form along with a signed print copy of the same if it is not digitally signed, in the respective form as indicated below:-

(i) for all minerals except copper, gold, lead, pyrite, tin, tungsten, zinc, precious and semi-precious stones, in Form F1 of the Schedule;

(ii) for copper, gold, lead, pyrite, tin, tungsten and zinc, in Form F2 of the Schedule; and

(iii) for precious and semi-precious stones, in Form F3 of the Schedule;

(c) an annual return which shall be submitted before the 1st day of July each year for the preceding financial year in electronic form, along with a signed print copy of the same if it is not digitally signed, in the respective Form as indicated below:-

(i) for all minerals except copper, gold, lead, pyrite, tin, tungsten, zinc, precious and semi-precious stones, in Form G1 of the Schedule;

(ii) for copper, gold, lead, pyrite, tin, tungsten and zinc, in Form G2 of the Schedule;

(iii) for precious and semi-precious stones, in Form G3 of the Schedule:

Provided that in the case of abandonment of a mine, the annual return shall be submitted within one hundred and fifty days from the date of abandonment.

(6) Any person or company engaged in trading or storage or end-use or export of minerals, shall submit online to the Indian Bureau of Mines and concerned State Government, where the said person or company is sourcing the minerals, the returns in electronic form, along with a print copy of the same if it is not digitally signed, in the following manner, namely:-

(a) a monthly return which shall be submitted before the tenth day of every month in respect of the preceding month in Form L of the Schedule;

(b) an annual return which shall be submitted before the first day of July of each year for the preceding financial year in Form M of the Schedule.

(7) If it is found that the holder of a mining lease or the person or company engaged in trading or storage or end-use or export of minerals, as the case may be, has submitted incomplete or wrong or false information in daily or monthly or annual returns or fails to submit a return within the date specified; then,—

(a) in the case of mining of minerals by the holder of a mining lease, the Regional Controller of Mines may advise the State Government to,—

(i) order suspension of all mining operations in the mine and to revoke the order of suspension only after ensuring proper compliance;

(ii) take action to initiate prosecution under these rules;

(iii) recommend termination of the mining lease, in case such suppression or misrepresentation of information indicates abetment or connivance of illegal mining;

(b) in the case of trading or storage or end-use of minerals, the State Government, where the person or company engaged in trading or storage or end-use of minerals is sourcing the minerals, shall order suspension of—

(i) trading licence (by whatever name it is called);

(ii) all transportation permits issued to such person or company for mineral transportation (by whatever name it is called);

(iii) storage licence for stocking minerals (by whatever name it is called); (iv) permits for end-use industry of minerals (by whatever name it is called);

as the case may be, of such person or company engaged in trading or storage or end-use of minerals, and may revoke the order of suspension only after ensuring proper compliance;

(c) in the case of export of minerals, the Directorate General of Foreign Trade shall order suspension of permits for carrying out such exports of minerals of such person or company engaged in export of minerals, and may revoke the order of suspension only after ensuring proper compliance:

Provided that the holder of a mining lease or the person of company engaged in trading of storage or end user or export of minerals, as the case may be, referred to in clause (a), (b) and (c) above, shall be informed in writing about the violation and if the violation is not rectified within a period of forty-five days, a show cause notice shall be given asking reasons why the mining operations should not be suspended and, further, if no satisfactory reply is received within a period of thirty days, the mining operations may be suspended.

(8) In case of mining of minerals by the holder of a mining lease, the—

(a) sale value is the gross amount payable by the purchaser as indicated in the sale invoice, where the sale transaction is on an arms' length basis and the price is the sole consideration for the sale, excluding taxes, if any.

Explanation.— For the purpose of computing sale value, no deduction from the gross amount shall be made in respect of royalty, payments to the District Mineral Foundation and payments to the National Mineral Exploration Trust;

(b) ex-mine price of mineral grade or concentrate shall be,—

(I) where export has occurred, the total of, sale value on free-on-board (F.O.B) basis, less the actual expenditure incurred beyond the mining lease area towards —

- (i) transportation charges by road;*
- (ii) loading and unloading charges;*
- (iii) railway freight (if applicable);*
- (iv) port handling charges or export duty;*
- (v) charges for sampling and analysis;*
- (vi) rent for the plot at the stocking yard;*
- (vii) handling charges in port;*
- (viii) charges for stevedoring and trimming;*

(ix) any other incidental charges incurred outside the mining lease area as notified by the Indian Bureau of Mines from time-to-time, divided by the total quantity exported;

(II) where domestic sale of mineral has occurred, the total of sale value of the mineral, less the actual expenditure incurred towards loading, unloading, transportation, rent for the plot at the stocking yard, charges for sampling and analysis and any other charges beyond mining lease area as notified by the Indian Bureau of Mines from time-to-time, divided by the total quantity sold;

(III) where sale has occurred, between related parties and is not on arms' length basis, then such sale shall not be recognised as a sale for the purposes of this rule and in such case, sub-clause (IV) shall be applicable;

(IV) where the sale has not occurred, the average sale price published monthly by the Indian Bureau of Mines for that mineral grade or concentrate for a particular State:

Provided that if for a particular mineral grade or concentrate, the information for a State for a particular month is not published by the Indian Bureau of Mines, the last available information published for that mineral grade or concentrate for that particular State by the Indian Bureau of Mines in the last six months previous to the reporting month shall be referred, failing which the latest information for all India for the mineral grade or concentrate, shall be referred;

(V) the per unit cost of production in case of captive mines.

(9) In case of trading or storage or end-use or export of minerals, for purpose of filing of returns, the value of the mineral grade or concentrate shall be,—

(a) where sale of the mineral grade or concentrate has occurred and the sale transaction is on an arms' length basis and the price is the sole consideration for the sale, the sale value of the mineral grade or concentrate recorded in the invoice;

(b) where sale has not occurred, the product of average sale price published monthly by the Indian Bureau of Mines for a particular mineral grade or concentrate for a particular State and the quantity dispatched or procured:

Provided that if for a particular mineral grade or concentrate, the information for a State for a particular month is not published by the Indian Bureau of Mines, the last available information published for that mineral grade or concentrate for that particular State by the Indian Bureau of Mines in the last six months previous to the reporting month shall be referred, failing which the latest information for all India for the mineral grade or concentrate, shall be referred.

(10) If more than one mineral is produced from the same mine, return shall be submitted along with the relevant parts of the specified forms for each mineral separately.

(11) In case of temporary discontinuance of mining or suspension of mining, or temporary discontinuance or suspension of trading or storage or end-use or export of minerals, the holder of a mining lease, or the person or company engaged in trading or storage or end-use or export of minerals, as the case may be, shall submit return in the specified form for the mineral for which return had been submitted earlier and furnish relevant particulars, inclusive of "Nil" information, if any.

(12) In case ownership of the mine or the trading or storage or end-use or export company changes during the reference period, separate returns shall be filed by each owner for the respective periods of ownership.

(13) For the purpose of regulation of transportation of minerals, all persons and companies owning trucks or any other motorised vehicle used for transportation of mineral by road or through water way shall be required to be registered with the Directorate of Mining and Geology or the Department handling mining matters in the State Government, and the lessee shall maintain trip-sheets (either in the form of written record or on computers) of the vehicles, the nature and weight of mineral and the approximate time of the trip and its destination.

CHAPETER IX

REVISION AND PENALTY

61. Revision.- (1) Any person aggrieved by any order made or direction issued under these rules by any authorised officer excepting the State Government, as the case may be, may within thirty days of the communication of such order or direction, apply to the Controller General or the Director, Atomic Minerals Directorate for Exploration and Research, as the case may be, for a revision of the order or direction:

Provided that any such application may be entertained after the said period of thirty days if the applicant satisfies the Controller General or the Director, Atomic Minerals Directorate for Exploration and Research, as the case may be, that he had sufficient cause for not making the application within time: Provided further that if any order made or direction issued by an officer subordinate to the Chief Controller of Mines, the application shall be made to the Chief Controller of Mines who shall deal with the application in the manner provided hereunder.

(2) Every order against which a revision application is preferred under sub-rule (1) shall be complied with pending receipt of the decision of the Controller General or the Director, Atomic Minerals Directorate for Exploration and Research or the Chief Controller of Mines, as the case may be:

Provided that the Controller General or the Director, Atomic Minerals Directorate for Exploration and Research or the Chief Controller of Mines, as the case may be, may suspend the operation of the order against which the revision has been preferred, pending disposal of the revision application.

(3) On receipt of an application for revision under sub-rule (1), the Controller General or the Director, Atomic Minerals Directorate for Exploration and Research or the

Chief Controller of Mines, as the case may be, after giving a reasonable opportunity of being heard to the aggrieved person, may confirm, modify or set aside the impugned order.

(4) Any person aggrieved by any order made or direction issued by the Chief Controller of Mines may within thirty days of the communication of such order or direction, prefer an appeal to the Controller General as against the said order or direction:

Provided that any such appeal may be entertained after the said period of thirty days, if the applicant satisfies the Controller General that he had sufficient cause for not making the application within time.

(5) On receipt of any such appeal under sub-rule (4), the Controller General may confirm, modify or set aside the order or direction made or issued by the Chief Controller of Mines or may pass such orders in relation to the applicant, as it may deem fit and such decision shall be final.

(6) Every order against which appeal is preferred under sub-rule (4), shall be complied with pending receipt of the decision of the Controller General: Provided that the Controller General may, on an application made by the applicant, suspend operation of the order or direction appealed against pending disposal of the appeal.

(7) Every application submitted under the provisions of this rule shall be accompanied by a bank draft for ten thousand rupees as application fee drawn on a scheduled bank in the name of 'Pay and Accounts Officer, Indian Bureau of Mines' payable at Nagpur or by way of a bank transfer to the designated bank account of the Indian Bureau of Mines:

Provided that in case the application under sub-rule (1) is made to the Director, Atomic Minerals Directorate for Exploration and Research, the amount of ten thousand rupees shall be remitted as per the details specified by the Director, Atomic Minerals Directorate for Exploration and Research in this regard.

62. Penalty.— Whoever contravenes any of the provisions of these rules shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees, or with both, and in the case of a continuing contravention, with additional fine which may extend to fifty thousand rupees for every day during which such contravention continues after conviction for the first such contravention:

Provided that any offence punishable under these rules may either before or after the institution of the prosecution, be compounded by the person authorised under section 22 of the Act to make a complaint to the court with respect to that offence, on payment to that person, for credit to the

Government, of such sum specified in this regard by the Controller General or the Director, Atomic Minerals Directorate for Exploration and Research, in respect of minerals specified in Part B of the First Schedule to the Act where the grade of such atomic minerals is equal to or above the threshold value limits declared under Schedule-A of the Atomic Minerals Concession Rules, 2016, as the case may be:

Provided further that in case of an offence punishable with fine only, such sum shall not exceed the maximum amount of fine which may be imposed for that offence:

Provided also that where an offence is compounded under these rules, no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith.

FORM F1

[See rule 45(5) (b) (i)]

For the month of 20

MONTHLY RETURN

[To be used for minerals other than Copper, Gold, Lead, Pyrites, Tin, Tungsten, Zinc and precious and semi-precious stones]

To

- (i) The Regional Controller of Mines
Indian Bureau of Mines
..... Region,
PIN:

(Please address to Regional Controller of Mines in whose territorial jurisdiction the mines falls as notified from time to time by the Controller General, Indian Bureau of Mines under rule 62 of the Mineral Conservation and Development Rules, 1988) संयोजित नमूने

- (ii) The State Government

PART – I

(General and Labour)

1. Details of the Mine:	
(a) Registration number allotted by Indian Bureau of Mines (to give registration number of the Lessee/ Owner)	
(b) Mine Code (allotted by Indian Bureau of Mines)	
(c) Name of the Mineral	
(d) Name of Mine	

(e) Name(s) of other mineral(s), if any, produced from the same mine	
(f) Location of the Mine :	
Village	

Post Office		
Tahsil/Taluk		
District		
State		
PIN Code		
Fax no:	E-mail:	
Phone no:	Mobile:	
2. Name and address of Lessee/Owner (along with fax no. and e-mail):		
Name of Lessee/Owner		
Address		
District		
State		
PIN Code		
Fax no:	E-mail:	
Phone No:	Mobile:	
3. Details of Rent/ Royalty / Dead Rent/ DMF /NMET amount paid in the month		
(i) Rent paid (₹)		
(ii) Royalty paid (₹)		
(iii) Dead Rent paid (₹)		
(iv) Payment made to the DMF (₹)		
(v) Payment made to the NMET (₹)		
4. Details on working of mine:		
(i) Number of days the mine worked:		
(ii) Reasons for work stoppage in the mine during the month (due to strike, lockout, heavy rain, non-availability of labour, transport bottleneck, lack of demand, uneconomic operations, etc.) and the number of days of work stoppage for each reason	Reasons	No of days

separately		

5. Average Daily Employment and Total Salary/Wages paid #:

Work place	Direct		Contract		Total Salary/Wages (₹)	
	Male	Female	Male	Female	Direct	Contract
Below ground						
Opencast						
Above ground						
Total						

To include all employees exclusive to the mine and attached factory, workshop or mineral dressing plant at the mine site

PART-II
(PRODUCTION, DESPATCHES AND STOCKS)
(To be submitted separately for each mineral)
(Unit of Quantity in Tonnes)

1. Type of ore produced:

(Applicable for Iron ore only; tick mark whichever is applicable)

- (a) Hematite
(b) Magnetite

2. Production and Stocks of ROM ore at Mine-head

Category	Opening stock	Production	Closing stock
(a) Open Cast workings			
(b) Underground Workings			
(c) Dump workings			

3(i) Grade-wise ROM ore despatches from mine head (\$):

Grade of ROM@	Despatches from mine-head	Ex-mine Price (₹)

(\$): Applicable for iron ore and chromite only. For other minerals data of despatches to be reported in 3(ii)

3(ii) Grade-wise Production, Dispatches, Stocks and Ex-mine prices:

Grades**	Opening stock at mine-head	Production	Despatches from mine-head	Closing stock at mine-head	Ex-mine price (₹/Tonne)

3(iii) In case the mineral is being pulverized in own factory, please give the following particulars(*):

Grade**	Total quantity of mineral Pulverized (in tonnes)	Total quantity of pulverized mineral produced (for each mesh size)		Total Quantity of pulverized mineral sold during the month		
		Mesh size	Quantity (tonne)	Mesh size	Quantity (tonne)	Ex-factory Sale value (₹)

3(iv) Average cost of pulverization (*) : ₹_____per tonne.

(*): Not applicable for Iron ore, Manganese ore, Bauxite and Chromite

4. Details of deductions made from sale value for computation of Ex-mine price (₹/ Tonne)

Deduction claimed #	Amount (in ₹/ Tonne)	Remarks

a) Cost of transportation (indicate loading station and distance from mine in remarks)		
b) Loading and unloading charges		
c) Railway freight, if applicable (indicate destination and distance)		
d) Port handling charges/ export duty (indicate name of port)		
e) Charges for sampling and analysis		
f) Rent for the plot at Stocking yard		
g) Other charges (specify clearly)		
Total (a) to (g)		

Not applicable for captive dispatches and ex-mine sales

5. Sales/ Dispatches effected for Domestic Purposes and for Exports:

Grade (^)	Nature of Despatch (indicate whether Domestic Sale or Domestic Transfer or Captive consumption or Export)	For Domestic Purposes				For export		
		Registration number as allotted by the Indian Bureau of Mines to the buyer ##	Consignee name ##	Quantity	Sale value (₹)	Country	Quantity	F.O.B Value(₹)

(^): To indicate the grades of ores
as mentioned below (see @ and
**) ## To indicate separately if
more than one buyer.

NOTE:- Mine owners are required to substantiate domestic
sale value/ FOB value for each grade of ore quoted above with copy
of invoices (not to be submitted with the return; to be produced
whenever required).

6. Give reasons for increase/decrease in production/nil production, if any, during the month compared to the previous month.

-
-
-

7. Give reasons for increase/decrease in grade wise ex-

mine price, if any, during the month compared to the previous month.

- a)
- b)
- c)

I certify that the information furnished above is correct and complete in all respects.

Place:
Date:

Signature

Name in full:

Designation: Owner/Agent/Mining Engineer/Manager

21. In view of the provisions contained in Section 9 of the MMDR Act, 1957, the holder of a mining lease granted on or after the commencement of the Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.

22. To give effect to the Rules, the MCR, 2016 in Chapter XII deals with Mineral Valuation. Rule-38 states about the sale value; Rule 39 deals with payment of royalty; Rule 40 deals with provisional assessment and adjustment; Rule 42 deals with computation of average

sale price; Rule 43 deals with publication of average sale price, whereas formula to that has been provided at Rule 45 as mentioned above. The MCR, 2016, which has been framed in exercise of the powers conferred under Section 13 of the MMDR Act, 1957, has come into force on its publication in the gazette of India on 04.03.2016.

23. Similarly, in exercise of power concerned under Section 18 of the MMDR Act, 1957 and in supersession of the Mineral Conservation & Development Rules 1988, except as respects things done or omitted to be done before such supersession, the Central Government has framed MCDR, 2017, which has come into force with effect from 27.02.2017 on its publication in the gazette of India. Chapter-VI thereof deals with Notices and Returns. Rule 45 deals with monthly and annual returns. As such, Form F1 has been provided for furnishing the monthly return, and Part-II thereof deals with Production, Despatches and Stocks. Clause 4 of Part-II deals with details of deductions made from sale value for computation of Ex-

mine price. Therefore, the purpose of providing such Form F1 under Rule 45 (5) (b)(i) is to keep track of the mineral used by the leaseholder for the purpose of determination of its royalty and dead rents and other statutory dues to be payable to the authority concerned.

24. Explanation (b) to Section 188 (1) of Companies Act, 2013 provides the meaning of “arm’s length transaction” to the following effect:-

“the expression —arm’s length transaction means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.”

Fourth proviso to Section 188 (1) of the Companies Act, 2013 provides that *“nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm’s length basis”*.

25. The transaction of the petitioner-company is in the ordinary course of business. In Black’s Law Dictionary, “ordinary course of business” means “normal routine in managing trade or business”. Therefore, the sale purchase transactions of iron ore between the

petitioner-company and the related party and users having steel manufacturing plants are transactions necessarily in the ordinary course of business.

26. The petitioner-company, as per the requirement of Rule 45 (7) of the MCDR, 2017, read with Form F1 has to submit the monthly returns to the opposite party no.1-IBM and providing rectification and explanation as required in accordance with the guidelines formulated by the Indian Bureau of Mines and published by the opposite party no.3. Even though the petitioner-company complies such provisions scrupulously, on 16.12.2021, the opposite party no.1-IBM issued a violation-cum- show cause notice to the petitioner-company in respect of Jajang Iron Ore Mines and Nuagaon Iron Ore Mines in the State of Orissa, alleging violation of Rule 45 (7) and Rule 45 (8)(III) of the MCDR, 2017 and directed the petitioner-company to give reasons within 30 days from the date of issue of the notice as to why not-

- “(a) All mining operations and dispatches of the mine should be stopped.
- (b) You should be prosecution under these rules.

- (c) *Recommended termination of the mining lease for suppression or misrepresentation of information indicates abatement or connivance of illegal mining.”*

27. In response to the said notice, the petitioner-company submitted its reply on 18.12.2021 to the CCOM (MDRD) of Indian Bureau of Mines, Nagpur, requesting that unless and until the above stated reply is considered, no decision may be taken to revise the ASP already published excluding the domestic sale transactions of the lessee, the petitioner-company, herein, under the pretext that the same were not qualifying sale transactions under Rule 45 (7) and Rule 45 (8)(III) of the MCDR, 2017. When such reply to show cause was pending for consideration, on 27.12.2021, the petitioner-company furnished another reply stating that the notices do not fulfill the statutory conditions for issuance thereof and ex-facie does not show any violation of other cause of action for which action is contemplated therein. But surprisingly, on the date of issuance of show cause notice, i.e. 16.12.2021, an internal correspondence was made by opposite party no.1-IBM to the Director, (Statistics) and In-Charge

MMS Division of the Indian Bureau of Mines, whereby, referring to the sale of various grades of iron ore by the petitioner-company from its iron ore mines in Jajang and Nuagaon, it was recommended that ASP of the State of Odisha may be calculated excluding the ex-mine price of the above mines, as the same were allegedly not on arm's length basis.

28. Dr. Singhvi, learned Senior Advocate appearing for the petitioners emphatically submitted that when such a letter has been addressed, may be an internal communication, and the petitioner-company has filed its show cause replies on 18.12.2021 and 27.12.2021, i.e. in relation to allegation of violation of certain conditions of the provisions of law, i.e. Rule 45 (7) and Rule 45 (8)(III) of the MCDR 2017, the authorities have proceeded with determination of ASP, that itself amounts to violation of principle of natural justice. It is further contended that the opposite party no.1 has published ASP for September, 2021 and October, 2021 on 30.11.2021 and 29.12.2021 respectively and marked

ASP for Iron Ore for the State of Orissa as “P” or “Provisional” for few grades for which the published ASP was lower by more than 20% from published ASP of August, 2021. Thereby, contended that till the grievances of the petitioner-company are meted out, pursuant to reply given by it to the notice of show cause dated 16.12.2021, the petitioner-company should be permitted to sell on the provisional price fixed for month of September, 2021, instead of insisting upon to go for higher price, which would prejudice the interest of the petitioner-company.

29. In **Oryx Fisheries Private Limited** (supra), the apex Court at paragraphs-31, 32 and 33 of the judgment observed as follows:-

“31. It is of course true that the show cause notice cannot be read hyper-technically and it is well settled that it is to be read reasonably. But one thing is clear that while reading a show-cause notice the person who is subject to it must get an impression that he will get an effective opportunity to rebut the allegations contained in the show cause notice and prove his innocence. If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which

promises to give the person proceeded against a reasonable opportunity of defence.

32. Therefore, while issuing a show-cause notice, the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and specially when he has the power to take a punitive step against the person after giving him a show cause notice.

33. The principle that justice must not only be done but it must eminently appear to be done as well is equally applicable to quasi judicial proceeding if such a proceeding has to inspire confidence in the mind of those who are subject to it.”

30. Similarly, in **K.I. Shephard** (supra), the apex Court at paragraph-16 of the judgment observed as follows:-

“We may now point out that the learned Single Judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional heading. On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now represent and their cases could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then given them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.”

31. In view of the law laid down by the apex Court, as discussed above, it is made clear that the

show cause notice cannot be read hyper-technically and it should be read reasonably and, as such, it must give an effective opportunity to rebut such allegations contained in the show cause notice and prove his innocence. Merely asking for show cause reply and the reply is submitted thereto and non-consideration of the same amounts to empty formality, thereby such show cause notice does not commence as a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defence. As such, while issuing the show cause notice the authorities must take care to manifestly keep an open mind as they are to act fairly in adjudging the guilt or otherwise of the person proceeded against and especially when he has the power to take a punitive step against the person after giving him a show cause notice. The subsequent judgment of the apex Court, which has been mentioned above, also reveals the same view where the apex Court held that there is no justification to throw the employees out of employment

and then give them an opportunity of representation when the requirement is that they should have the opportunity as a condition precedent to action.

32. Therefore, if the above principles are applied in letter and spirit to the present context, certainly alleging violation of Rule 45 (7) and Rule 45 (8)(III) of the MCDR, 2017, a notice of show cause was given on 16.12.2021, to which the petitioner-company submitted its reply on 18.12.2021 and subsequently on 27.12.2021, and the same are pending before the authority for consideration. However, on the date of issuance of show cause notice, the internal commutation dated 16.12.2021 was issued recommending that ASP of Odisha may be calculated excluding ex-mine price of Jajang and Nuagaon mines, as the same are allegedly not on “arm’s length basis”. Therefore, it can be safely construed that opposite parties have not yet complied the principle of natural justice for having not taken a decision on the show cause replies submitted by the petitioner-company. As a

matter of fact, the authorities should take a decision on the show cause replies submitted by the petitioner-company, in response to the notice of show cause issued on 16.12.2021, in consonance with the principle of natural justice. Thereby, Issue No.(ii) is answered in affirmative in favour of the petitioner-company.

33. **Issue No. (iii).**

Whether the fixation of price and issuance of ASP is legally tenable or not?

In view of the pleadings available on record, the notice of show cause issued on 16.12.2021 for violation of certain procedures envisages under Rule 45 (7) read with Rule 45 (8)(III) of the MCDR, 2017, stands on a completely different footing than that of fixation of price of royalty by the opposite parties.

34. In view of the provisions of Section 9 of the MMDR Act, 1957, the holder of a mining lease granted on or after the commencement of the Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the

time being specified in the Second Schedule in respect of that mineral.

35. To give effect to such provisions, MCR, 2016 came to effect. Chapter XII thereof deals with Mineral Valuation. Rule-38 states that 'sale value' is the gross amount payable by the purchaser as indicated in the sale invoice where the sale transaction is on an "arms' length" basis and the price is the sole consideration for the sale, excluding taxes, if any. Rule 39 deals with payment of royalty, meaning thereby the determination to pay the amount has to be made under sub-rule (3) of Rule 39, which specifies that wherever the Act specifies that the royalty in respect of any mineral is to be paid on an *ad valorem* basis, the royalty shall be calculated at the specified percentage of the average sale price of such mineral grade/ concentrate, for the month of removal / consumption, as published by the Indian Bureau of Mines. Sub-rule (5) of Rule 39 made it clear that wherever the Act specifies that the royalty of any mineral is to be paid on tonnage basis, the royalty shall be

calculated as product of mineral removed or consumed from the lease area and the specified rate of royalty. Rule 40 deals with provisional assessment and adjustment; Rule 42 deals with computation of average sale price. Sub-rule (1) of Rule 42 states, that the ex-mine price shall be used to compute average sale price of mineral grade/ concentrate. The ex-mine price of mineral grade or concentrate has been provided in Sub-rule (2) of Rule 42. Rule 43 deals with publication of average sale price fixing 45 days limit from the due date for filing the monthly returns, as required under the Mineral Concession Development Rules, 1988.

36. The MCDR, 2017 has nothing to do with the MCR, 2016 and both the rules stand on separate footing altogether, as per the nomenclature given to the Rules itself. Chapter VI of the MCDR, 2017 deals with notices and returns, which compels the holder of a mining lease, or any person or company engaged in trading or storage or end-use or export of minerals mined in the country, shall cause himself to be registered online with the

Indian Bureau of Mines as per application specified in Form-K of the Schedule and the registration number so allotted by the Indian Bureau of Mines shall be used for all purposes of online reporting and correspondence connected therewith.

37. As per sub-rule (5)(b)(i) of Rule 45, a monthly return shall be submitted for all minerals except copper, gold, lead, pyrite, tin, tungsten, zinc, precious and semi-precious stones, in Form F1 of the Schedule. Form F1, as mentioned above, requires a monthly return to be used for minerals other than the minerals specified therein. Thereby, it casts an obligation on the part of the holder of a mining lease, or any person or company engaged in trading or storage or end-use or export of minerals mined in the country to furnish such details, which provides elaborate utilization of the minerals unit of quantities in tones. The purpose of furnishing such returns is to indicate that the holder of mining lease cannot make any misutilization of minerals rather he

shall adhere to such monthly/annual returns scrupulously.

38. Under sub-rule (7) of Rule 45, it has been indicated that, if it is found that the holder of a mining lease or the person or company engaged in trading or storage or end-use or export of minerals, as the case may be, has submitted incomplete or wrong or false information in daily or monthly or annual returns or fails to submit a return within the date specified; then, he is liable for penal action as specified therein under clauses-(a) to (c). Even the opportunity also been given to the parties, if any violation is pointed out, to rectify the same within a period of 45 days, otherwise the action should be taken. Thereby, the rule is very sacrosanct for furnishing notice and returns.

39. Rule 45(8)(III) of MCDR, 2017 also specifies that where sale has occurred, between related parties and is not on arm's length basis, then such sale shall not be recognized as a sale for the purposes of this rule and in such case, sub-clause (IV) shall be applicable.

Thereby, for alleged violation of Rule 45 (7) read with Rule 45 (8)(III) of the MCDR, 2017, the show cause notice was issued on 16.12.2021, to which the petitioner-company had given replies on 18.12.2021 and 27.12.2021. That has got nothing to do with the fixation of payment of royalty in terms of Rules 38, 39, 40 and 42 of MCR, 2016. Even though MCDR, 2017 has come into force on 27.02.2017, it will apply in the context the Rule has been framed, which has no bearing with the MCR, 2016, which came into force with effect from 04.03.2016 and framed in a different context altogether. Thus, two separate rules have been framed for two separate purposes to achieve the ultimate goal under the MMDR Act, 1957. Hence, the steps taken against the petitioner-company by issuing a notice of show cause on 16.12.2021 on the allegation of violation of Rule 45 (7) read with Rule 45 (8)(III) of the MCDR, 2017 is totally different than that of the fixation of price to be made under MCR, 2016.

40. In the counter affidavit filed on behalf of the opposite parties no.1 and 3, in paragraphs-II and LL, it has been stated as follows:-

II. Allegation of petitioner that the publication of Final ASP is without considering reply of show cause notice is not correct, as action on the show cause notices on the part of respondent no.1 is still under consideration and computation and publication of ASP is altogether is different process and it is as per laid down procedure.

xxx

xxx

xxx

LL. Allegation of petitioner that the publication of Final ASP is without considering reply of show cause notice is not correct, as action on the part of respondent no.1 is still under consideration and computation and publication of ASP is altogether is different process and it is as per laid down procedure.

Thereby, there is no dispute that pursuant to the show cause notice issued, the opposite party no.1 has received the reply, which is still under consideration. Therefore, this Court already held that the same should be considered in compliance to the principle of natural justice, while answering Issue No.(ii). But, so far as the determination of ASP is concerned, that being dealt with under MCR, 2016, reliance has also been placed on the documents annexed to the counter affidavit filed on behalf of opposite parties no.1 and 3 as Annexures-A/1

and A/2. Annexure-A/1 prescribes Mine wise, grade wise domestic sale reported in monthly return for the month of September, 2021 so far as the petitioner-company is concerned. From the entry available, it is found that quantity has been dispatched to a trader and trader to user which is none else but the company acquired by the petitioner-company. For example, so far Sl. No.1 is concerned, the trader is M/s Seven Hills Minerals Private, to whom the quantity has been dispatched, who in turn sold it to the user, i.e., M/s Bhushan Power & Steel Ltd (company acquired by M/s. JSW Steel Ltd, the petitioner-company herein). As such, the sale price in which the lessee sold to the trader has been shown as 1336.70, whereas the sale price at which the trader sold to the user has been shown as 1354.18. As such, in the remark column, it has been clearly indicated that the JSW Steel Ltd. routed iron ore through M/s. Seven Hills Mineral Private Ltd. to M/s. Bhushan Power & Steel Ltd, which JSW Steel owns. It is further revealed that under the heading “Fe Grade 55 to below 58% Fine”, the transaction has been made

between the petitioner-company and petitioner-company in the guise of the trader's name M/s Seven Hills Minerals Private Ltd. Similarly, under the heading "Fe Grade 58 to below 60% Fines", the Trader name is M/s. Brahmani River Pellets Limited and it has sold to JSW Steel Ltd., but reported as domestic sale, which is a related party to JSW Steel Ltd., as confirmed by JSW Steel itself. Likewise, if each transaction contained in Annexure-A/1 is verified, it will be evident that the same is nothing but a transaction of the leaseholder with that of the very same person, but by intervening different traders' name in between, and the amount, as has been shown, is detrimental to the interest of the State, who is the ultimate beneficiary of the revenue from the mining operation

41. Similarly, if Annexure-A/2 will be taken into consideration, the ex-mine price of iron ore reported by various non-captive leaseholders from July, 2021 to December, 2021 of monthly returns has been indicated. The petitioner's name finds place at Sl. No. 8 and 9. So far as Nuagaon Iron Ore Mines is concerned, in August,

2021, the ex-mine price has been shown at 4204, but for the months of September, 2021 it has been shown as 1358.76, October, 2021- 575.3, November, 2021 - 767.38 and December, 2021 - 1590. So far as Jajanga Iron Mines is concerned, which has been placed at Sl. No. 9, in August 2021, the ex-mine price has been shown at 4204, but for the months of September, 2021 it has been shown as 1485.01, October, 2021- 782.14, November, 2021 - 675 and December, 2021 - 641.87. If the same is compared with the other owners of the mines, the figure provided by the petitioner-company, appears to be not a realistic price slash, as such the sale has been made to the petitioner-company itself. As a consequence thereof, there is a gross loss to the State revenue. More so, under the Rules of MCR, 2016, no provision of hearing has been prescribed in compliance to principle of natural justice.

42. By giving an unrealistic price slash, a huge loss has been caused to the revenue of the Government, which is against public interest. Needless to say, Rule 40

of MCR, 2016 deals with provisional assessment and adjustment, whereas computation of average sale price is to be made pursuant to Rule 42 of the said Rules. If such computation is made by the authority in terms of the said rules, it cannot be said there is arbitrary and unreasonable exercise of power by the authority in violation of Articles 14 and 19(1)(g) of the Constitution of India. As such, Rule 43 of MCR, 2016 empowers the publication of average sale price by the Indian Bureau of Mines in respect of each mineral grade/concentrate removed from the mining leases in a month in a State within 45 days from the due date for filing the monthly returns as required under the Mineral Concession Development Rules, 1988. Adhering to Rule 43, if the computation has been made fixing ASP basing on the monthly returns, it cannot be said that the authorities have acted arbitrarily, unreasonably and contrary to the provisions of law so as to cause interference by this Court. Since MCR, 2016 and MCDR, 2017 operate separately and distinctly in separate areas, irrespective of their date of commencement, they have to govern in

their respective field. Therefore, the question of construction of Rules that the later enactment prevails over the earlier one, cannot have any justification.

43. Rule 42 (c) of MCR, 2016 prescribes the phrase “arm’s length basis” and that would be taken into consideration in common parlance vis-à-vis the provisions contained in Section 188 (1) of the Companies Act, 2013, which also explains the expression “arms’ length transaction” as a transaction between two related parties that is conducted as if they are unrelated, so that there is no conflict of interest. Therefore, the computation of ASP under Rule 42 of MCR, 2016 has been made taking into consideration the sale was occurred on “arm’s length basis”, as specified therein. Even though there was price slash in international and domestic market of the different grades of the iron ore fines, the same can only be considered and adjudicated in terms of MCR, 2016 on the basis of the monthly returns filed by the respective mines owners/lessees as per rule 42 of MCR 2016.

44. It is urged emphatically by the petitioner-company that the exclusion of petitioner-company's ex-mine price would have significant impact on the overall ASP and, as such, the petitioner-company has dispatched 71% of total low grade ore from the merchant mines in the entire State of Orissa in that period. This Court is not competent to make an assessment on the dispatch or production, rather it is within the complete domain of the opposite party no.1-IBM, who used to receive the monthly returns in terms of MCR, 2016 and fixes ASP for respective parties. The allegations made that opposite party no.1-IBM has artificially created illusion of high price by replacing the ex-mine price of several other lessees, apart from the petitioner-company, that cannot also be taken into consideration, in view of the documents available on record under Annexures-A/1 and A/2, which is apparently clear how the transaction has been taken place and how the price slash has got an impact in respect of other similarly situated lessees and, as such, none of the lessees, save and except the petitioner-company, has challenged the

same by filing writ petition. Therefore, this Court is of the considered view that the fixation of ASP in terms of MCR, 2016 is to be answered in affirmative in favour of the opposite parties and answered accordingly.

45. In view of the facts and law, as discussed above, this Court is of the considered view that the fixation of ASP in terms of MCR, 2016 cannot be held to be illegal or arbitrary.

46. In terms of the observations/directions give in the foregoing paragraphs, the writ petition stands disposed. There shall be no order as to costs.

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DR. B.R. SARANGI,
JUDGE

SAVITRI RATHO, J. I agree.

.....
SAVITRI RATHO,
JUDGE

Orissa High Court, Cuttack
The 16th March, 2022, Alok/Arun/GDS