Mines and Mineral Development and Regulation (MMDR) Amendment Act, 2015

The Mines and Mineral Development and Regulation (Amendment) Act, 2015 was passed by the Parliament during the just concluded Budget Session. This Act amends certain provisions of the Mines and Minerals Development and Regulation (MMDR) Act, 1957 and seeks to address emergent policy and regulatory issues pertaining to the mining industry. The MMDR Act, 1957, regulates the mining industry in India and specifies the requirement for obtaining and granting mining leases for mining operations. The Amendment has taken into consideration the views and recommendations of the Shah Committee and the recent Supreme Court judgment in the case of *Manohar Lal Sharma versus the Principal Secretary and Ors.*, which cancelled all coal-block allocations since 1993, and has introduced greater transparency in the allotment of the mining leases by resorting to the **auction route**. Furthermore, it is an important step towards removing delays and ensuring a simpler and quicker process for granting of mineral concessions.

Mining Industry in India – the opportunities and the challenges

India has abundant mineral wealth and among the *world's largest mineral deposits*; 3rd largest global coal and lignite deposits, 4th largest bauxite deposits[1] and substantial deposits of iron ore, copper, mica. Despite this, India is a net importer of iron ore, copper, coal; *17 billion USD coal import bill*

India is ranked **60th** out of 122 jurisdictions in the Investment Attractiveness Index and **63rd** in the Policy Perception Index according to the Survey of Mining Companies Report, 2014 published by Fraser Institute; moved up from 74th in 2013

[1] The mining sector is an important segment of the Indian economy and the country is endowed with huge resources of many metallic and non-metallic minerals. While mineral production is reported from 32 States/ Union Territories, almost 92% of the value of mineral production is confined to 12 states (including off-shore areas) only; Rajasthan, Odisha together contribute close to 25% of this value. However, despite having abundant mineral deposits figuring in the top 5 or 6 reserves globally across commodities such as thermal coal and iron ore, the mining industry has remained relatively small and stagnant. In fact, the *Index of Mineral Production has shown a negative growth in the last 4-5 years*. Moreover, the contribution of mining to India's GDP has fallen from 3.4 per cent in 1992-93 to 2 per cent in 2012-13 and the value of mineral production has remained stagnant, while the value of imports has been increasing. This is in sharp contrast to the increasing share of mining in the GDP of countries such as China, Brazil and Australia.

Also, the exploration spend in India accounts for only 0.4% of the world's exploration budget, which prevents it from keeping reserve development in line with production. India's exploration budget in 2013 stood at USD 17 per square km as against USD 51 in Brazil and USD 67 in China[2]. Only 11 companies have planned exploration activity in India. Moreover, in the last few years, the number of new Mining Leases granted in the country has fallen substantially and renewals have also been affected by certain Supreme Court judgments. All of this has contributed to sluggish growth in the mining sector, decrease in production of important minerals, leading to import of minerals by users of those minerals. It is in this context that this brief analyzes the Amendment Act, 2015, and the potential impact on the Indian economy.

[1] *Ministry of Mines Annual Report 2013-14* [2] *Putting India on the growth path: Unlocking the mining potential, a McKinsey Report*

Analysis of the MMDR (Amendment) Act, 2015

The MMDR Amendment Act, 2015 seeks to introduce a more *predictable* and *clear* regulatory and policy environment for the mining sector, so as to do away with delays and improve transparency in allocation of mineral resources. Provisions of the Act are in line with the recommendations of the *Anwarul Hoda Committee* on National Mineral Policy. The Bill focuses on attracting private investment and leveraging the latest technology so as to enable expeditious and optimum development of mineral resources of the country. It brings clarity on licensing terms, auctions and transfer of concessions. The most significant provision of the Bill is the introduction of competitive bidding process for granting new mining leases. The salient provisions of the Amendment Bill are as follows[3]:

Introduction of category specified as 'Notified Minerals' under the Fourth Schedule

The Amendment adds a new schedule to the MMDR Act, 1957, which includes ***Bauxite, Iron Ore, Limestone and Manganese Ore***. The 4 minerals are defined as *notified minerals and their end use is specified by the Central Government* under the newly released mineral auction rules. Accordingly, bauxite, iron ore and limestone can only be reserved for the end-use of alumina, integrated steel plants and cement plants by state governments respectively whereas a manganese mine can't be reserved for any end-use. Moreover, a two-stage auction model *comprising of a technical bid initially followed by a financial bid* has been proposed for iron ore, bauxite, limestone and manganese ore.

Removal of discretion: auction to be sole method of allotment

The Amendment removes discretion in the grant of mineral concessions. While all mineral concessions would continue to be granted by the respective State Governments, the grant of mineral concessions would be through auctions, thereby bringing in greater transparency and removing discretion. It is also clearly specified that all mining leases would henceforth be granted for *a period of fifty years as against the thirty years* earlier and this would also be applicable for the mining leases granted before the commencement of the MMDRA. There will be no renewal of any mining concession and all mining leases would be put for auction at the completion of the tenure. *This provision shall apply to all minerals other than coal, lignite and atomic minerals.* Auctioning would

Provision of Composite License i.e. Prospecting Licence-cum-Mining Lease (PL-cum-ML)

Under the existing act, there were 3 kinds of licences that could be granted: *Reconnaissance Permit (RP), Prospecting Licence (PL) and Mining Lease (ML)*. A RP is granted for preliminary prospecting through regional, aerial, geophysical or geochemical surveys and geological mapping. A PL is required for exploring, locating and proving mineral deposits. An ML is required to finally extract minerals. The Amendment creates a new category of mining licence i.e. the prospecting licence-cum-mining lease (PL-cum-ML) referred to as the **Composite Licence**, which is a two stage-concession for the purpose of undertaking prospecting operations (exploring or proving mineral deposits), followed by mining operations.

It is in accordance with the new provisions that the Central Government has come out with the new mineral auction rules. *Companies that were granted reconnaissance permits or prospecting licenses before the implementation of the new mining law will have the first right on prospecting and mining licenses, respectively.*

Permits	Under the Old Law	Under the Amendment
Reconnaissance Permit	As per the discretion of the state government	Non-exclusive Reconnaissance Permits (NERP) to be given as per the discretion of state government. The NERP has to be issued **within 30 days** to the company upon submission of online application along with the required documents. Data found is to be submitted with government for auction.
Prospecting Licence	RP holder had the first right to PL.	PL would be given directly to old RP holders

	Decision was taken as per the discretion of the state government.	only. New NERP holder will have to submit the data and would have to bid for composite license (PL- cum -ML)
Mining Lease	PL holder had the first right for ML. Decision was taken as per the discretion of the state government.	ML would be given directly to old PL holders only. Now, ML would be awarded through auction only

Source: http://www.business-standard.com/article/economy-policy/mineral-auction-rules-states-asked-to-decide-on-exploration-permits-within-a-month-115041700015_1.html

Removing pendency of applications for renewal: Impetus to the mining sector

Continued operations in the mining industry have been affected due to the pendency of applications for second and subsequent renewals. In fact, this pendency has led to closure of large number of mines. *The Amendment Bill, 2015 addresses this issue also and allows extension of the lease period up to 31st March 2030 for the captive mines and till 31st March, 2020* for the merchant mines or till the completion of the period of renewal already granted, if any, whichever is later. It is expected that this would immediately permit re-opening of mines that have got closed due to want of decisions on their applications for second and subsequent renewals to start their operations, subject to the necessary clearances. Provision has also been made to *allow transfer of mining leases*, after securing the requisite approval from the State Government within *a timeframe of 90 days* from submission of notification.

Establishment of District Mineral Foundation: Safeguarding interests of affected persons

The Amendment Bill introduces a mandatory provision to establish a trust, a non-profit body known as the **District Mineral Foundation (DMF)** in all districts where mining related operations take place. The establishment of the DMF has been introduced to address the concerns of local people in such districts, and work for the interest and benefit of the locals in mining affected areas. The composition and functions of the DMF would be prescribed by the State Government, which has to conform to the provisions of such acts as the Panchayats (Extensions to Scheduled Areas) Act, 1996, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 as well as provisions of the Constitution relating to Fifth and Sixth Schedule areas while framing these rules. *It also specifies the contribution to the DMF of an amount not exceeding one-third of the royalty rate in case of new mining concessions, while existing concession holders may have to pay up to 100% of the royalty.*

Setting up the National Mineral Exploration Trust (NMET): Encouraging exploration

India has the same geological strata as that of Africa and Australia and thus is likely to have a similarly large geological potential. It is therefore, crucial to get detailed exploration profiles for India. However, *aeromagnetic survey has covered only 18 per cent of the India's total area* in contrast to 90 per cent of Australia's total area covered since 1990 and Australia spends 246 USD per km^2, which accounts for 13.1% of the world's total exploration budget as compared to 0.4% in case of India[2]. To address this, the Amendment has defined a provision to setup a **National Mineral Exploration Trust (NMET)** with the objective of using funds contributed by the holders of a ML or a PL-cum-ML for carrying out extensive exploration exercises. The contribution shall not exceed a sum equivalent to two per cent of the royalty rate. The composition and functions of this trust would be prescribed by the Central Government.

Simplification of procedures and avoidance of delay and stringent provisions against illegal mining

In respect of ten minerals in Part C of First Schedule, State Governments needed to obtain the prior approval of the Central Government before grant of mineral concessions. The Amendment removes the need for such "prior approval" or approval of mining plan of the state from the Central Government, thereby making the process quicker and simpler. All offences under the Act will now be subject to a maximum punishment of 5 years imprisonment or fine of Rs. 5.00 lakhs per hectare. State Governments are also empowered to *set up Special Courts for speedy trial of offences under the Act*.

[3] http://pib.nic.in/newsite/PrintRelease.aspx?relid=117539, [2] *Putting India on the growth path: Unlocking the mining potential, a McKinsey Report*

Impact of the reforms on the Indian Economy

The MMDR Amendment Act is a key policy reform passed by the Parliament, which has the potential to initiate the transformation in the mining sector and usher in a period of accelerated growth in the mining sector. A robust mining sector experiencing strong growth is crucial for India's growth in the coming years as it is the backbone of the manufacturing and infrastructure sector. According to the data available with the Ministry of Mines, 5,70,000 km^2 has obvious geological potential but as of 2012, only 5,046 km^2 was under mineral lease, implying that less than one per cent of the OGP has been covered. Therefore, it is imperative that mining operations be scaled up in a scientific and transparent manner, so as to enable the domestic mining sector to be the foundation of economic growth and development in the country.

When talking about the impact of the reforms, this brief would also take into consideration the revision in royalty rates of 55 minerals announced by the Central Government as per Gazette Notification G.S.R. 630(E) dated 01.09.2014. The revision of minerals is supposed to be carried out every 3 years and was due in 2012. Under the revision of mineral royalty, the Cabinet Committee on Economic Affairs (CCEA) approved the proposal to raise the royalty rate on iron ore and chromite to 15 percent from 10 percent now. The royalty rate on *metallurgical grade Bauxite has been hiked to 0.6 percent from 0.5 percent now, manganese ore to 5 percent from 4.2 percent and lead concentrate to 14.5% from 12.7%.* Therefore, as a result with this decision, the royalty to mineral rich states would increase by **41%** from Rs 9,406 crore (2011-12) to Rs 13,274 crore (estimated). For instance, the revenue rise for Chhattisgarh would stand at Rs 1,976 crore from the existing Rs 1,346 crore while Orissa is set to be the biggest beneficiary in absolute terms as its revenue from royalties is expected to jump to **Rs 4,879.9 crore** from Rs 3,249 crore.[4]

Mining reforms would result in an accelerated growth scenario, which could result in increase of about *1.5 to 2.5 times the output from mining sector at current levels*; Increased direct contribution to GDP to the tune of USD 60-80 billion

Create 2 million to 2.5 million direct jobs by 2025, and an additional 11 million to 13 million jobs through indirect employment opportunities created in other sectors;*contributing 3 per cent to total employment*, up from 0.3 per cent currently[5]

Growth in the mining sector would help bridge the demand supply gap or else India will become a net importer of iron ore, coal. Robust mining sector would *reduce dependence on imports and address cost competitiveness issues faced by downstream industries*

In 2012, the mining and downstream industry generated about USD 18 billion in taxes. It could contribute approximately USD 40 to 50 billion as royalties, taxes and duty by 2025; *contribution of mining to GDP of Odisha can increase to 22.1%*[5]

According to a Strategy Paper for the Ministry of Mines released in 2011, it was observed that reforms could unlock the potential of the mining sector, thereby not just providing a boost to the economy but also creating livelihood opportunities for millions. The 4 key points as highlighted by the paper are as follows:

- Would add USD 210 billion to USD 250 billion (Rs. 945 to Rs. 1,125 thousand crore) to GDP by 2025, a growth of **10 to 12 per cent per annum**. This includes USD 60 billion to USD 80 billion (Rs. 270 to Rs. 360 thousand crore) direct and USD 150 billion to USD 170 billion (Rs. 675 to Rs. 765 thousand crore) indirect contribution.

[4] *http://pib.nic.in/newsite/PrintRelease.aspx?relid=117120,* [5]*Strategy Paper for the Ministry of Mines, 2011*

- Create **2 million to 2.5 million direct jobs by 2025**, and an additional 11 million to 13 million jobs through indirect employment opportunities created in other sectors, thereby contributing 3 per cent to total employment.

- Contribute USD 55 billion to USD 70 billion (275 thousand crore to 315 thousand crore) of revenue to the central and state governments through corporate taxes, royalty and export duty collections by 2025—around 50 per cent of the current combined fiscal deficit of the central and the state governments.

- Make a substantial impact on the mineral-rich states—for instance, the contribution of mining to state GDP in Chhattisgarh could grow from the current 13 per cent to 20 per cent in 2025, with a five-fold increase in royalty collection and twice as many people employed in the sector

Furthermore, it is envisaged that the MMDR Amendment Act, 2015 has provisions, which would incentivize the exploration for minerals in which India is deficient, for the simple reason that the deposits are deeper and difficult to mine. Exploration in India is mostly restricted to a depth of 50 to 100 metres, while it is conducted even as deep as 300 metres in countries such as Australia. Also, the introduction of composite licences would encourage more investment into the exploration and mining of deep-seeded minerals. At the same time though, it must be remarked that holders of such reconnaissance permits will not be entitled to make any claim for the grant of a PML or mining lease.

Moreover, the act would result in increased competition between companies in the mining sector and would also allow companies engaged in downstream activities such as steel production and alumina production to bid for captive ore sources to attain raw material security. This is also likely to bring down the cost of production, according to a Barclays Securities (India) report. The policy certainty on renewal of leases would also result in added production of about 30-40 million tonne of iron ore, providing significant relief to the steel industry and also cut down on imports.

Conclusion

The Amendment Act is in line with the vision of the Ministry of Mines to promote optimal utilization of India's mineral resources for its industrial growth and create economic surplus using scientific exploration and sustainable mining practices. It lays down a comprehensive legislative framework to ensure a fair and transparent manner of allocation, while safeguarding the interests of the local community and people affected by mining activities. It would open up the sector to enhanced activity from existing and new players, and thereby increase the productivity of the mining sector. The mineral-rich states such as Odisha, Jharkhand and Chhattisgarh would benefit from the increased revenue and livelihood opportunities. It should be remarked though that the Centre's role in the system ends with formulation of rules and auctions need to be conducted by the states in a planned and time-bound manner, which would ensure greater flow of funds into the state coffers. However, in order for the mining sector to realize its full potential, more steps need to be undertaken to create a conducive environment for the industry to flourish such as:

- ✓ Meeting the need-based skill requirements of the mining industry on a short-term and long-term basis
- ✓ Improving and expanding physical and logistics infrastructure and
- ✓ Ensuring active involvement of all concerned stakeholders