

**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**PRINCIPAL BENCH**

**ITEM No. 02**  
**(IB)-457(PB)/2023**

**ORDER UNDER SECTION 9 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 R/W RULE 6 OF THE INSOLVENCY AND BANKRUPTCY (APPLICATION TO ADJUDICATING AUTHORITY) RULES, 2016**

**IN THE MATTER OF:**

**MAHAKALESHWAR MINES AND MINERALS  
PRIVATE LIMITED**

Through its

Authorized Representative

Having office at: N-6/ 263, IRC Village, Nayapalli, ....

Odisha – 751014.

CIN No. U13100MP2009PTC021768

Petitioner/Operational  
Creditor

Versus

**MIDEAST INTEGRATED STEELS LIMITED**

Through its

Authorized Representative

Having office at: H-1, Zamrudpur Community ....

Centre, Kailash Colony, New Delhi, Delhi 110048

CIN No.-L74899DL1992PLC050216

Respondent/Corporate  
Debtor

**Order delivered on 23.04.2024**

**CORAM:**

**JUSTICE RAMALINGAM SUDHAKAR  
HON'BLE PRESIDENT**

**SH. AVINASH K. SRIVASTAVA  
HON'BLE MEMBER (TECHNICAL)**

**HYBRID HEARING (PHYSICAL & VC)**

**PRESENT:**

For the Operational : Adv. Pallav Mongia, Adv. Ritik Sharma  
Creditor

For the Corporate : Sr. Adv. P. Nagesh, Adv. Aditya Nayyar, Adv. Akshay  
Debtor Sharma

## **ORDER**

The present application has been filed by Mahakaleshwar Mines and Minerals Private Limited (hereinafter referred to as '**Applicant**'/ '**Operational Creditor**') on 25.07.2023, u/s 9 of the Insolvency and Bankruptcy Code, 2016 ('The Code'), r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ("AA Rules") ,for initiating the Corporate Insolvency Resolution Process (CIRP), declaring moratorium and for appointment of Interim Resolution Professional (IRP), against Mideast Integrated Steels Limited (hereinafter referred to as '**Respondent**'/ '**Corporate Debtor**') for default of **Rs. 1,66,71,375/-** (Rupees One Crore Sixty Six Lakhs Seventy One Thousand Three Hundred Seventy Five Only).

### **BRIEF FACTS**

- 1.** The Operational Creditor (OC) entered into multiple Sale and Purchase Contract wherein the Corporate Debtor (CD) agreed to sell Iron Ore Screened Fines wherein the OC was required to make the complete payment related to contract and loading charges before lifting of material and once the material is ready to be lifted from the site, the CD would raise the invoices.
- 2.** It is pleaded that OC has already paid the full amount w.r.t stack no.10AAA but has not been able to lift the material due to non-availability of rail racks and lifting permission from the CD. It is stated that Stack No. 10 AAA, is a part of the Sale and Purchase of Contract dated 30.03.2021 and that OC has made advance payment of Rs 1,31,24,216/- to the CD on 16.04.2021.
- 3.** It is pleaded that due to non-fulfillment of the terms of the contract by the CD and the commitment made by the OC to its buyers in the international market, OC had to, as an emergency measure arrange goods from other seller and thereby suffer financial difficulty.
- 4.** In the above backdrop, OC sent an e-mail dated 30.03.2022 to the CD seeking a refund of the total debt amounting to Rs. 1,66,71,375/- (which includes Rs. 1,18,95,080 due as per contract and Rs. 47,76,295/- as per loading charges). Copy of email dated 30.03.2022 is annexed as **Annexure A-13** to the

application. Further, it is stated by the OC that the CD sent an e-mail dated 24.06.2022 wherein they have admitted that w.r.t to stack 10AAA, the OC has submitted entire sale value and further admitted that the OC could not lift the goods due to non-availability of racks within the permitted time. Copy of email dated 24.06.2022 is annexed as **Annexure A-15** to the application.

5. That due to failure on the part of CD, to refund the amount as mentioned above, the OC sent a demand notice dated 28.04.2023 under section 8 of the Code which was delivered to the CD. Copy of the Demand Notice dated 28.04.2023 is annexed as **Annexure A-20** to the application. It is stated by the OC that it has not received any prior notice of dispute from the CD. Copy of affidavit in compliance of Section 9(3)(b) of the Code has been also been attached.

Therefore, the OC has filed the present application for initiation of proceedings.

**Submissions of the Ld. Counsel appearing for the Corporate Debtor are:**

Notice was issued to the CD for filing of reply. CD filed its reply denying averments made in the Section 9 application on the following grounds:

- A. Firstly, it is submitted by the CD that the amount as claimed by the OC in the present petition does not qualify to be an operational debt and by way of the present petition the petitioner only seeks to recover the said amount. The OC has allegedly made some payments for purchase of goods which are outside the purview of the definition of “operational debt”.
- B. Secondly, it is stated by the CD that the OC has not complied with Section 9(3)(b) and 9(3)(c) of the Code, which are mandatory in nature and in the absence of same, the petition is liable to be dismissed.
- C. Thirdly, it is stated by the CD that IBC has been framed for resolution of companies and not for recovering any amount.

- D.** Fourthly, it is submitted by the CD that the transaction and the alleged debt claimed in the present petition falls within the suspended period as provided under Section 10A of the Code. It is stated that the alleged contract, the alleged invoice and the said payment is executed in the suspended period and the petitioner in order to recover the amount has erroneously and wrongly taken 30.03.2022 as the date of default. There is no default and there is no liability on its part in this transaction.
- E.** Further, it is stated by the CD that the OC has not attached Form-5A with the application and the OC has not attached any record of information utility (NESL Certificate).
- F.** The CD submits that it applied and sought for lifting permission and Form 1 was issued on 19.04.2021 which was valid till 23.05.2021. However, despite several follow ups, the OC failed to place the railway rake for transportation of minerals to Pradeep Port within the permitted time i.e. 23.05.2021. It is further stated by the CD that it is the responsibility of the OC to engage trucks and lift the permitted material within the prescribed time, however the OC did not secure the rake and did not lift the material due as the price of the iron ore reduced in the market and the material was booked on a higher price. On 24.06.2021 the OC requested the CD to reduce the price of iron ore and also requested to allow lifting of more material against the earlier permitted quantity. However, DDM Joda, despite CD's request on behalf of OC did not consider the request of the OC as the permission given by the Hon'ble Supreme Court expired on 23.05.2021.
- G.** It is further stated by the CD, that the Hon'ble Supreme Court on 20.04.2022 granted Six months' time to dispatch the already excavated, processed and stacked iron ore i.e. (before 01.01.2018). It is stated by the CD that several reminders were given by CD but the OC only requested to reconsider the price of Iron Ore and after long time the OC on 24.06.2022 again approached the CD and requested it to apply for Re-

Permission on present market price, wherein the CD immediately requested the DDM Joda to allow for execution of a fresh sale and purchase agreement on present market price and to allow the Re-Permission of material against the earlier deposited Material Cost with Government. But DDM Joda did not allow the permission.

**H.** It is stated by the CD that since 2020, number of permissions have been taken by it from Hon'ble Supreme Court to sell the undisposed stocks lying in the Roida Mines. Pursuant to Hon'ble Supreme Court order it was able to dispose off already extracted material and deposit the amount with the State Govt. along with the statutory dues. This amount is with the State Govt. That the alleged payment by the OC is non-refundable as per the agreement and it is not with the CD but with the State Govt. OC should approach the State Govt. since the payment has been made to them due to Hon'ble Supreme Court order dated 15.01.2020 and 06.04.2023.

**I.** It is the stand of the CD that since the OC did not take the delivery of goods, the CD cannot be faulted. Further there is pre-existing dispute, hence, this petition has to be dismissed. It is denied that the CD did not give permission. It is only because OC could not arrange for railway rakes that goods were not taken by OC. It is the OC's fault and not that of the CD.

### **Analysis and Findings**

We have heard oral arguments of Mr. Pallav Mongia, Ld. Counsel for the OC as well as Mr. P. Nagesh, Ld. Sr. Counsel for the CD on facts and law which we will discuss in detail as necessary for the adjudication of this matter.

**6.** The CD was granted license by the Government of India on 11.05.1994 for setting up pig iron and steel manufacturing plant at Jajpur, Odisha. It held a valid mining lease over 104.68 hectares of Roida-I Iron Ore Mines in village Tinto-Barbil, Odisha valid till 31.03.2020. On the basis of this Mining

Lease, it took up mining process which fell into disarray and consequent to excessive mining and breach of the conditions, actions were initiated against the CD by the Mining Authorities which resulted in the case being considered by the Hon'ble Supreme Court and in IA—30915/2019 in Writ Petition (Civil) No.114 of 2014, the Hon'ble Supreme Court passed an order dated 15.01.2020. The relevant extract of the order dated 15.01.2020 is as follows:

**I.A. No. 30915 of 2019**

6. *M/s Mideast Integrated Steels Ltd. (hereinafter "Mideast") seeks the following reliefs:*

*allow this application and permit the applicant herein to sell 23,51,027.83T of iron ore of different grade and sizes which has been extracted, processed and stacked at the dispatch site within the lease hold area.*

*direct the respondents State of Odisha and its officials to issue Transit Permit for transportation of the said quantity of iron ore of different sizes and grades from the lease hold areas,*

*permit the applicant herein to deposit the entire consideration money received from the buyers to the State of Odisha towards partial satisfaction of the demand raised by the State vide Demand Notices dated 02.09.2017.*

*pass any other order or orders as your Lordships may deem fit and proper in the facts and circumstances of the instant case as well as in the interest of justice.*

7. *Mideast was granted licence by the Government of India on 11.05.1994 for setting up a Pig-Iron and Steel Manufacturing Plant near Duburi in Jajpur, Odisha; and it also holds a valid mining lease over 104.68 hectares of Roida-I iron-ore mines in village Tinto-Barbil near Keonjhar, Odisha, valid till 31.03.2020. Notwithstanding the statutory embargo placed by the Notification dated 14.09.2006 which made it a pre-requisite to first obtain environmental clearance prior to enhanced production, Mideast appears to have extracted mineral over and above what was permissible. Hence, per this Court's judgment dated 02.08.2017 in the lead matter, Mideast was liable to compensate the State of Odisha for the illegal extraction.*

8. *Consequently, a demand notice for payment of Rs. 924,75,24,283/ by 31.12.2017 was served on Mideast. Upon its failure to deposit the claimed compensation, Mideast's mining operations in Roida-I iron ore mines were stopped with effect from*

01.01.2018. However by then, the applicant-company had already excavated, processed and stacked 23,51,027.83 Tons of minerals at the discharge point of Roida-I for onwards transportation to various buyers as well as for captive consumption in its own steel plant. Mideast approached the Orissa High Court for lifting the stacked iron ore and upon being unsuccessful there, has moved the instant application with the prayers reproduced above.

9. The applicant relied upon an order dated 16.07.2019 passed by this Court in I.A. No. 56934 of 2019 in S.L.P. (Civil) No. 20708 of 2016 whereby Mala Roy and other applicants were permitted to sell their stacked iron ore under supervision of State authorities and the proceeds were directed to be deposited with the State towards outstanding dues.

10. Mideast also undertakes to apply the sale proceeds of its stacked iron ore towards the demand raised against it by the State in order to simultaneously augment the State's revenue as well as reduce the applicant's liabilities.

11. Learned counsel for the State of Odisha conveyed no objection to granting the applicant's prayer subject to the iron ore being sold under the supervision of an authority appointed by the State Government, and the sale proceeds mandatorily being deposited with the Special Purpose Vehicle (OMBADC). Both these conditions are agreeable to Mideast, which undertakes to comply with them.

12. The Central Environment Committee (CEC) had also filed a report dated 06.11.2019 recommending that the iron ore already extracted by the applicant may be permitted to be sold subject to the following modalities as specified in paragraph 19 of the report.

“19. In view of the facts and discussion above relating to the sale of stock of iron ore lying within the mining lease in village Roida-1, Keonjhar District held by M/s. Mideast Integrated Steels Ltd. The following modalities for sale are recommended:

The lessee will make grade-wise stacks of minerals in lots of 4000 MT, and or its multiples following the IBM approved technical formula for conversion of volume to weight applicable to each type of ore like lumps, fines and ROM:

*the sale of the stock of mineral will be conducted by the Odisha Mining Corporation Limited, a Government of Odisha undertaking under the supervision of a Committee headed by the Deputy Director of Mining having jurisdiction over the mining lease and consisting of representatives of the DFO concerned and the Regional Controller of Mines, IBM, Bhubaneswar;*

*the lessee is at liberty to suggest the reserve price at which the sale is to be held;*

*M/s. OMC may be paid a fee of 0.5% of the sale value, excluding the statutory payments for undertaking the sale of iron ore;*

*the sale proceeds, after the payment of statutory dues including Royalty, DMF and NMET, shall be deposited in the account of the SPV (OMBADC) being the compensation u/s 21(5) of MMDR Act as ordered in Judgment dated 2.8.2017 of this Hon'ble Court;*

*the lessee is responsible for making available the actual quantity of iron ore available to the OMC for sale. Any quantity of ore that is available in excess of the declared stock of 23,51,027.83T shall be the property of the Government and the lessee shall not have claim for such excess stock and if there is any shortfall in the actual available quantity as compared to the declared quantity of 2351,027.83T the lessee shall not be eligible to make good any such shortfall in the declared quantity; and*

*the adjustment of the amounts being realized from the present sale towards the compensation amount to be paid by the Applicant/lessee in compliance of the judgment dated 2.8.2017 will be subject to the orders to be passed by this Hon'ble Court in respect of the proceedings under consideration of this Hon'ble Court relating to violation of Rule 37 of MCR."13. Considering the concurring stand taken by the State of Odisha and the CEC, Mideast's application for permission to sell the iron ore of different grades and sizes, lime extracted at its site, is allowed in accordance with the above reproduced CEC's modalities. The sale shall be monitored and supervised by a authority of the State Government which is to be notified within one week, and the proceeds shall be deposited with the JPV and may partially be applied towards the demand raised on 02.09.2017 by the State of Odisha."*

*13. During the pendency of these proceedings, this Court on 22.11.2017 constituted a committee of Hon'ble Mr. Justice G. S.*



*Singhvi and Hon'ble Mr. Justice Anil R. Dave, retired Judges of this Court with the specific mandate to ascertain violation of Section 6 of the Mines and Minerals (Development and Regulation) Act, 1957 or of Rule 37 of the Mineral Concession Rules, 1960. The Committee in Volume-V of its report (which was taken on record by this Court on 24.10.2019) though has found that Mideast had sublet its lease rights in violation of Rule 37. However, the aforementioned finding of the Committee does not affect consideration of this present application, and instead might be relevant if and when the applicant requests renewal or extension of its lease period.*

**14. For the reasons stated above, I.A. No. 30915 of 2019 is allowed and Mideast is permitted to sell the iron ore already mined and stacked by it before 01.01.2018, under supervision of an authority to be appointed by the State Government subject to the sale proceeds being deposited with the Special Purpose Vehicle (OMBADC). The State Government shall appoint the Supervisory Authority within two weeks' and the sale process shall preferably be completed within two months thereafter. Since the applicant-company has neither sought nor have we permitted any resumption of mining operations, the aforesaid regulatory violations are not material for purposes of our determination of permitting sale of already extracted and stacked minerals and application of proceeds towards State arrears.**


*(emphasis supplied)*

7. A reading of Para-14 of the aforementioned order of the Hon'ble Supreme Court makes it clear that the CD was permitted to sell the iron ore already mined and stacked before 01.01.2018 under supervision of authority appointed by the State Government subject to the condition that the sale proceeds should be deposited with the Special Purpose Vehicle (OMBADC). A timeline for sale was fixed. The resumption of mining operation was not allowed however the sale proceeds of iron ore already mined and stacked were to be paid to discharge the State arrears, making it clear that no amount can be retained by the CD in the sale of the iron ore fines etc.
8. On the basis of the order passed on 15.01.2020 by the Hon'ble Supreme Court, series of contracts were entered into by the CD with various purchasers of iron ore including the OC. One amongst the several contracts

is contract dated 30.03.2021 (annexed as **Annexure A-4** of the petition) which is the subject matter of the present lis. Contract Dated 30.03.2021 is extracted as below:

# 33

## ANNEXURE -A4



**MESCO STEEL**

INTERNATIONAL

Ref. No : MISL/CONTRACT/MMMPL-02/03/2020-21/124-C Date: 30.03.2021

**SALE & PURCHASE CONTRACT**

Reference to the discussion with our Management, the Sale & Purchase Contract (herein after referred to as the 'Contract') is made on 30<sup>TH</sup> March 2021 and entered into by and between:

**BUYER** : MAHAKALESHWAR MINES & MINERALS PVT. LTD.  
**ADDRESS** : N-6/263, IRC Village, Nayapalli, Odisha, GST No. 21AAF69697P1ZL  
**E-mail** : mmineralspltd@gmail.com  
**Cont No.** : 8720010300

**SELLER** : MIDEAST INTEGRATED STEELS LTD.  
**Address** : Roida-I Iron Ore Mines, Tonto, Bhardasahi, Barbil, Odisha  
**E-mail** : sdhingra@mescosteel.com  
**Cont. No.** : 9999652984

(Hereinafter BUYER and SELLER are collectively referred to as the "Parties")

WHEREAS, the Seller agrees to sell and deliver and the Buyer agrees to purchase and take the delivery of the quantity and type of Iron Ore Fines as set forth in the Contract in accordance with the terms and conditions of this Contract as follows:


**ARTICLE 1: COMMODITY DESCRIPTION**

Commodity : Iron Ore Fines  
 Delivery Term : Ex-Mines

**ARTICLE 2: GUARANTEED SPECIFICATION , QUANTITY & UNIT PRICE AS AGREED BY BOTH THE PARTIES**

Commodity	Basis (Fe%)	Quantity (MT)	Stack No.	Unit Price (Rs. Per MT)
Iron Ore Sr. Fines	57% to below 58%	3980.238	10ZZ	3233/-
	(As is where basis)	3808.840	10AAA	

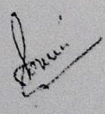
a. Goods & Service Tax: Extra as applicable (Paid by Buyer)  
 b. TCS: Extra as Applicable/Form 27 C (Paid by Buyer)  
 c. Price is inclusive of Royalty, DMF, NMET only.  
 d. TCS on Royalty & DMF : Extra as applicable (Paid by Buyer)



**MIDEAST INTEGRATED STEELS LTD**

**Corporate Identity No. L74890L1992PLC050216**

Barbil Office : Panchavati, P.O. Barbil-758035, Dist. Keonjhar, Odisha, Phone : 09937087666, Fax : 06767-277524  
 Kolkata Office : 4, Parle Place, (H.M.P. House), 2nd Floor, Kolkata-700 001, Tel. : 033-40729021, 40669022, Fax : 033-22317249  
 Bhubaneswar Office : Mesco Tower 3915, Lewis Road, Kedargauri Square, Bhubaneswar-751 014, Odisha, Tel. : 0674-2432755/59, Fax : 0674-243  
 Plant : Kalinga Nagar Industrial Complex, Khurunli, P.O. Danagadi-755026 Dist Jajpur, Odisha, Tel. : 06726-266042/45, 0671-2383100, Fax : 06726-266041  
 Mumbai Office : Unit No. 401, Silver Perl Bldg , Water Field Road, Bandra (W), Mumbai-400 050, Tel. : 022-26603173/7475  
 Web. : www.mescosteel.com



TRUE COPY





MESCO STEEL  
Continuing Progress

- e. Loading Charges to be paid directly to MISL/loading Agency as nominated by MISL @ Rs. 55/- pmt. Details of loading agency to be followed.
- f. User Fee @ Rs. 1 PMT to be charged extra.

### ARTICLE 3: PAYMENT TERMS

Buyer will make the payment to the Seller as follows:

1. Buyer shall make the royalty, DMF, NMET, User Fee , TCS on royalty & DMF (as applicable) amount at the time of application is made.
2. Balance payment prior to dispatch

In case, any increase in statutory charges, the same shall be payable by buyer at the time of permission /despatch

Once booking is done, transfer, cancellation, refund shall not be entertained

Non refundable Advance amount once deposit, ensure to take the Material as per your booking quantity

### ARTICLE 4: DETERMINATION OF QUANTITY (WEIGHT)

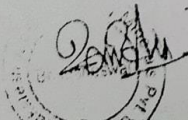
The recorded weight at Government-approved weighbridge at mines shall be final and binding for the purpose of Final Invoice and all other purpose.

### ARTICLE 5: ANALYSIS

Pre inspection & sampling would be final & binding to both the party. Material is being sold "as is where" basis and no claim shall be entertained at the time/after dispatch. Joint sampling and Analysis by the Third Party public analysis Agency to be appointed by the buyer at their own cost before placing order. Once material is loaded into tucks no complain with regard to quality shall be entertained.

### ARTICLE 6: ARBITRATION

Any dispute arising out of the contract shall be resolved amicably and in case if not settled mutually then it shall be decided by the Arbitration and Conciliation Act 1996. The venue of the arbitration shall be Bhubaneswar



*Pallav*

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MIDEAST INTEGRATED STEEL LTD

Corporate Identity No. L74890L1992PLC050216

Bhubaneswar Office : Panchavati, P.O. Barbil-758035, Dist. Keonjhar, Odisha, Phone : 09937087666, Fax : 06767-277524  
Kolkata Office : 4, Parle Place, (H.M.P. House), 2nd Floor, Kolkata-700 001, Tel. : 033-40729021, 40669022, Fax : 033-22317249  
Bhubaneswar Office : Mesco Tower 3915, Lewis Road, Kedargaun Square, Bhubaneswar-751 014, Odisha, Tel. : 0674-2432755/59, Fax : 0674-2432256  
Plant : Kalinga Nagar Industrial Complex, Khuruntli, P.O. Danagadi-755026 Dist. Jajpur, Odisha, Tel. : 06726-266042/45, 0671-2383100, Fax : 06726-266041  
Mumbai Office : Unit No. 401, Silver Perf Bldg., Water Field Road, Bandra (W), Mumbai-400 050 Tel. : 022-26603173/74/75  
Web. : www.mescosteel.com





**MESCO STEEL**  
Partnership Progress

**ARTICLE 7: VALIDATION AND ALTERNATION**

This contract shall become effective after signing by both parties. Any change, modification on or addition to the terms and conditions of this Contract shall become effective when confirmed by both SELLER & BUYER in writing. All communication referred to this Contract shall be in writing and will be sent by email and or by telex, cable and fax to the address stated by the Parties. The agreement supersedes all or any other agreement, whether written or verbal between the parties.

Entire permitted quantity is to be lifted within a maximum period of 30 (Thirty) days for road movement.

**ARTICLE 8: CONFIDENTIALITY**

The Parties agree that the terms of the Contract shall remain confidential between the Parties and that neither Party shall disclose any of the terms of the Contract or any amendments thereto to any third party or related corporation unless such disclosure is required by law or unless prior written approval has been obtained from the other Party.

**ARTICLE 9: OTHER CONDITIONS**

Other terms and conditions not provided in this Contract shall be decided later as they arise in good faith and by mutual agreement between SELLER AND BUYER.

Order is valid subject to available of material & approval from the concern committee

The Contract shall be considered legal and binding upon signatures on fax or email scanned copies upon receipt of the counter signed copies by fax or email. However both the parties will exchange original hard copies of contract/amendments (duly signed) by courier.

In witness whereof, the Parties have executed this Contract and the duly authorized representatives of SELLER and BUYER have signed them as of the date first written above:

**BUYER**

**SELLER**

MAHAKALESHWAR MINES & MINERALS PVT. LTD.

MIDEAST INTEGRATED STEELS LTD.



*Patel*

*[Signature]*

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MIDEAST INTEGRATED STEELS LTD.

Corporate Identity No. L74890L1992PLC050216

Barbil Office : Panchavati, P.O. Barbil-758035, Dist. Keonjhar, Odisha, Phone : 09937087666, Fax : 06767-277524

Kolkata Office : 4, Parle Place, (H.M.P. House), 2nd Floor, Kolkata-700 001, Tel. : 033-40729021, 40669022, Fax : 033-22317249

Bhubaneswar Office : Mesco Tower 3915, Lewis Road, Kedargauri Square, Bhubaneswar-751 014, Odisha, Tel. : 0674-2432755/59, Fax : 0674-2432256

Plant : Kalanga Nagar Industrial Complex, Khurunti, P.O. Danagadi-755026, Dist. Jajpur, Odisha, Tel. : 06726-266042/45, 0671-2383100, Fax : 06726-266041

Mumbai Office : Unit No 401 Silver Pearl Bldg, Water Field Road, Bandra (W), Mumbai-400 050. Tel. : 022-26603173/74/75

Web : www.mescosteel.com

9. The Sale & Purchase Contract contemplates 3808.840 Metric Tonnes of quantity of Stack No. 10AAA at the unit price of Rs.3233/- per metric tonnes. In this context it is relevant to mention Article-3 of the Contract which reads as follows:

*“Article 3: PAYMENT TERMS*

*Buyer will make the payment to the Seller as follows:*

- 1. Buyer shall make the royalty, DMF, NMET, User Fee, ICS on royalty & DMF (as applicable) amount at the time of application is made.*
- 2. Balance payment prior to dispatch.*

*In case, any increase in statutory charges, the same shall be payable by buyer at the time of permission/dispatch.*

*Once booking is done, transfer, cancellation, refund shall not be entertained.*

*None refundable Advance amount once deposit, ensure to take the Material as per your booking quantity.”*

10. Consequent thereupon, the OC forwarded a sum of Rs.1,31,24,216/- in relation to Stack No. 10AAA for 3808.840 metric tonnes quantity. This is reflected at the **Annexure A-12** of the petition which shows various amounts paid by the OC to the CD for purchase of said goods. On receipt of the said amount, that Form-L and Form-I were issued by the State Government Authorities which is not in dispute. Form L and I are extracted below:



**ANNEXURE A (COLLY)**

FORM - L

6



See Rule 10(8) and Rule 10(13)

**TRANSIT PERMIT FOR LESSEE**

OFFICE OF DEPUTY DIRECTOR OF MINES, JODA  
Permit No. **L42102211** / Mines. Dt. **17/04/2021**

To,  
The Manager Mines, **Mid East Int. Steel Ltd.-Roida - I, Sidhamath(071813014401)**

Dear Sir,

With Reference to your application, dated **01 Apr 2021** you are hereby allowed to remove the **Iron Ore** from the following stack(s) from your above mines to the destination **MAHAKALESHWAR MINES AND MINERALS PVT LTD (061313614921)**. The validity of the permission is **17 Apr 2021** to **23 May 2021** subject to observance of OM(PTS & IM & RPST & T) Rule 2007.

The ore shall be got weighed at and checked at DIRECT.

**PARTICULARS OF STACKS**

S.No.	Quarry No.	Stack No.	Nature	Cubic Content	Quantity in Tones	Grade, Grade Range	Size	Destination	Mode	Remarks
1	2	3	4	5	6	7	8	9	10	11
1	SR.PLANT	10AAA	Screened Fines	1708	3808.84	57.12,55% to below 58% - Screened Fines	No Size	MAHAKALESHWAR MINES AND MINERALS PVT LTD(061313614921), BANSPANI(BSPX)RAIL SIDING TO JSW PARADEEP(DDIP)PLOT NO-12C of JSW PARADIP TERMINAL PVT.LTD.UNDER PPT, Paradeep Port- CHINA	By Road to Rly sdg outside lease	IRON ORE SR FINES (DUMP AND LOAD BASIS) loading point: BANSPANI(BSPX) loading point: BANSPANI(BSPX), Destination Station: DEEP DRAUGHT IRON ORE AND COAL BERTHS OF M/S PPT,DDIP
				Total	3808.84					

ePass Issued: 431

NO OVERLOADING IS ALLOWED

Disclaimer: Request No- 225200 ( 17/04/2021), Pass Validity (In days)  
: 1

Yours faithfully

Joint Director Mines, JODA

*Amey*  
True Copy

Memo No.....**L42102211 - 1**...../ Mines Dt....**17/04/2021**

Copy to ...**Sri Dillip Kumar Mahana**.....SIM for Information.

Joint Director Mines, JODA

Memo No.....**L42102211 - 2**...../ Mines Dt....**17/04/2021**

Copy to the CGC... for information. He is directed to ensure that no ore beyond the permitted quantity is transported.

Joint Director Mines, JODA

Memo No.....**L42102211 - 3**...../ Mines Dt....**17/04/2021**

Copy to the DDM/MO BARIPADA, BERHAMPUR, BHAWANIPATNA, BOLANGIR, CUTTACK, JAJPUR ROAD, KEONJHAR, KOIRA, KORAPUT, PHULBANI, ROURKELA, SAMBALPUR, TALCHER for information.

Joint Director Mines, JODA

Memo No.....**L42102211 - 4**...../ Mines Dt....**17/04/2021**

Copy to the Station Master..... for information. He is directed to ensure that no ore beyond the permitted quantity is transported.

Joint Director Mines, JODA

Copy To Permit file/TP Section

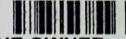
Joint Director Mines, JODA

*Amey*  
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7

**FORM - I**

[See Rule 10(3) and Rule - 10(13)]

**FORM OF PERMIT FOR THE LICENSEE / OTHER THAN MINE OWNER**

Permit No. I42104943

OVER LOAD NOT TO BE ALLOWED

Dt. 19/04/2021

1.	Name (Name in Full) of the person whom permit is granted	MAHAKALESHWAR MINES AND MINERALS PVT LTD (061313614921)-Plot no- 12C of JSW Paradip Terminal Pvt. Ltd Under Paradip Port.						
2.	Profession	BUSINESS						
3.	Full Address	24/368, Arhun nagar, Amahiya, Rewa, Madhya Pradesh						
4.	Father's Name (In case of firm given name and address of the partner or person holding power of attorney to act on behalf of the firm)	MAHAKALESHWAR MINES AND MINERALS PVT LTD						
5.	Name of the Ore/Mineral to be transported	Iron Ore						
6.	Quantity and quality of minerals / ore is to be transported (In tones and grade in % of mineral content)							
SINo.	Nature	Stack/DO/RR No.	Quantity	Grade	Size	Consignee Name	Destination	Remarks
1	Screened Fines	10AAA	3808.84	57.12	No Size	MAHAKALESHWAR MINES AND MINERALS PVT LTD (061313614921)	MAHAKALESHWAR MINES AND MINERALS PVT LTD, BANSPANI(BSPX)RAIL SIDING TO JSW PARADEEP(DDIP)PLOT NO-12C of JSW PARADIP TERMINAL PVT.LTD.UNDER PPT,BANSPANI(BSPX)RAIL SIDING TO JSW PARADEEP(DDIP)PLOT NO-12C of JSW PARADIP TERMINAL PVT.LTD.UNDER PPT CHINA	IRON ORE SR FINES (DUMP AND LOAD BASIS) loading point: BANSPANI(BSPX)
7.	Source from which the mineral / ore is procured	Mid East Int. Steel Ltd. (071813014401)-Roida - I,						

<https://3ms.odishaminerals.gov.in/3MS/PMSCS/Printforml.aspx?PV11MQjdub7rkR7dCYaeeN3gggrRkMulV2C6pm2pFo=>

1/3

	Sidhamath Valid memo no. L42102211 dt. 17 Apr 2021
8.	Purpose of transportation of ore / mineral For Export sale
9.	Period for which permit is required From : 19 Apr 2021 To : 23 May 2021
10.	Place where the mineral/ore will be presented for checking
11.	Number & date of application for permit 556751 & 19 Apr 2021

12. The grantee shall abide by the terms and conditions below :

- The issue of permit is subject to the terms and conditions of O.M. (PTS & IM & RPSTT) Rule-2007
- The ores/minerals shall be subject to checking enroute by the staff empowered under the said rule.
- The Ores/Minerals carrying truck shall always carry T.P in form 'M' / 'G' issued by this office duly authenticated
- Violation Rule, 18(3) of chapter 8 will be punishable under the said rule
- The licensee has to abide by the existing guidelines issued by the O.S.P.C.B.
- The licensee has to maintain the adequate pollution control measures in his Depot.

M Book No. NA

Joint Director Mines, JODA

Memo No. .... I42104943-1 ..... / Mines Dt. 19/04/2021

Copy forwarded to M/s. .... MAHAKALESHWAR MINES AND MINERALS PVT LTD (061313614921)-Plot no- 12C of JSW Paradip Terminal Pvt. Ltd Under Paradip Port. 24/368, Arhun nagar, Amahiya, Rewa, Madhya Pradesh. for information and necessary action with reference to his/their application date... 19 Apr 2021

Joint Director Mines, JODA

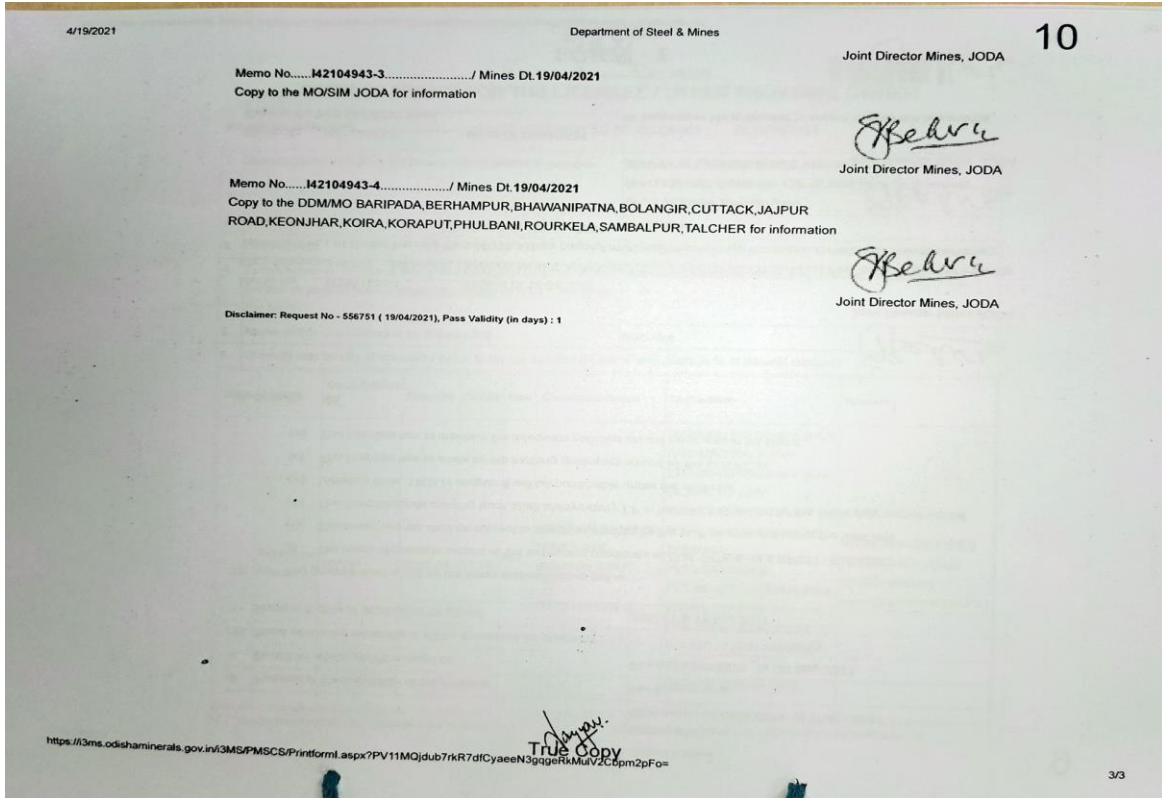
Memo No. .... I42104943-2 ..... / Mines Dt. 19/04/2021

Copy to the WB CLERCK/ Peon. .... for information. He is directed to ensure that no ore beyond the permitted quantity is transported.

<https://3ms.odishaminerals.gov.in/3MS/PMSCS/Printforml.aspx?PV11MQjdub7rkR7dCYaeeN3gggrRkMulV2C6pm2pFo=>

2/3





- 11.** In this context it is relevant to mention that Form-L is a Transit Permit for Lessee bearing Permit No. L42102211 issued by the Deputy Director of Mines, Joda on 17.04.2021. It is issued to the Manager, Mideast Integrated Steels Ltd.(CD) referring to an application dated 01.04.2021 for sale of iron ore to the OC against Stack No.10AAA having quantity of 3808.84 metric tonnes by railway and the Transit Permit was valid for a period from 17.04.2021 to 23.05.2021. A copy of the Transit Permit has also been marked to Mr. Dilip Kumar Mahana, SIM for information; CGC for information; DDM/MO Baripada, Berhampur and the Station Master concerned, all signed by the Joint Director of Mines, Joda.
- 12.** To support this Transit Permit, Form-I is issued by the Department of Steel and Mines under Permit No. I42104943 dated 19.04.2021. The person to whom the permit is granted is OC and the iron ore is procured is from the CD. The Stack No. is 10AAA and the quantity is 3808.84 metric tonnes, consignee's name is of the OC and the destination is also of the OC. The period of permit is from 19.04.2021 to 23.05.2021 and the copy of



the same is signed by the Joint Director of Mines, Jodaand is marked to various persons.

- 13.** In effect, the Transit Permit issued to the OC has already been received by the OC; however, he could not take delivery of the goods due to peculiar situation that arose during Covid-19 and there was a difficulty arranging for railway wagons. This difficulty is amplified and clarified by the OC himself in Para Nos. 5 to 8 of the Affidavit dated 04.03.2024.

*“5. It is humbly submitted that as per Rule 10 of the Orissa Minerals (Prevention of Theft, Smuggling & Illegal Mining and Regulation of Possession, Storage, Trading, and Transportation) Rules, 2007 (hereinafter ‘the Rules’), the seller/ Corporate Debtor applies for Form L and after receiving permission from the competent authority, the buyer/ Operational Creditor applies for Form I. In the present case the Corporate Debtor received the permission (Form L) on 17.04.2021 and afterward, on 19.04.2021, the Operational Creditor based on such permission secured Form I. Both the permissions were valid till 23.05.2021. It is pertinent to note that the seller/ Corporate Debtor should have the requisite permission to transport goods then only the buyer/ Operational Creditor would be able to apply for the permission for transportation.*

*6. That in terms of the contract dated 30.03.2021, the Corporate Debtor was duty-bound to obtain Form L and deliver the subject goods, and the Operational Creditor to obtain Form I and to arrange a railway wagon for pick up. It is a well-known fact that in the normal course of time, it is difficult to arrange railway wagons. To combat the shortage of railway wagons, the Ministry of Railways follows a preferential allotment method for wagons wherein the utmost priority is given to military movement (Priority ‘A’) and relief work (Priority ‘B’). The subject goods/ iron ores fall under the second category of Priority ‘C’ i.e. under Clause 3.1. (b) of Category C, within Priority ‘C’ coal traffic is priority over iron ores. Therefore, it is not easy to secure the railway wagons for transportation. A copy of the preferential allotment order dated 30.03.2021 of Indian Railways is annexed as ANNEXURE R-1.*

7. *It is humbly submitted that previously, the Corporate Debtor had secured several Mining permissions to the Operational Creditor which were valid for sixty days. It is well known to Corporate Debtor and the Mining Authority that arranging railway wagons usually takes more than sixty days. It is pertinent to note that for the concerned contract, in terms of the directions of the Hon'ble Supreme Court, the Corporate Debtor received Form L with a validity of thirty-five days only. On questioning thirty-five days validity, the Corporate Debtor had assured that in case of non-arrangement of railway wagons by the Operational Creditor, the Corporate Debtor will reapply for the permission. However, the Corporate Debtor failed to reapply for the permission.*

*A copy of Form L and Form I with the validity of sixty days is annexed hereto as ANNEXURE R-2 (Colly.)*

8. *Furthermore, during that time, the world was suffering from the deadly COVID-19 virus. The railway operations were also nonfunctional/ disturbed. As a result of the force majeure of COVID-19, the Operational Creditor was unable to arrange the railway wagons for transportation within the permissible period of one month i.e. from 19.04.2021 to 23.05.2021. Resultantly, the permission to deliver subject goods by the Corporate Debtor and the permission to transport subject goods by the Operational Creditor lapsed. That due to the shortage and preferential practice of allocation of the railway wagons, the industry practice is to keep the permission alive i.e. the onus was on the Corporate Debtor to renew Form L under the Rules. The Corporate Debtor failed to keep the permission alive.”*

14. Even as per the statement of the OC, he is in receipt of Form-L and Form-I however the OC could not transport the goods because of the issue of railway wagons, which is not in dispute. It is also to be noted that in view of this peculiar circumstances, certain e-mail correspondence happened between the OC and the CD. These e-mails are annexed as **Annexure A-13 and A-14** of the petition at Page-44 to Page-46.



44  
MAHAKALESHWAR MINES & MINERALS PVT LTD <mmmpvtltd2@gmail.com>

**Refund of advance amount**

10 messages

**ANNEXURE -A13**

**sanjay mishra** <mmmpvtltd2@gmail.com>  
To: sdhingra@mescosteel.com  
Cc: Odisha Sourcing <sourcing.odisha@gmail.com>

Wed, Mar 30, 2022 at 11:19 AM

Dear Sir,  
We would like to state that, we have an advance amount of Rs.1,66,71,375/- pending(ledger attached) with you for a long time. We therefore request you to refund the amount due to us as soon as possible. Following are the bank details below :-  
Name: Mahakaleshwar Mines & Minerals Pvt. Ltd  
Bank Name: Axis bank Ltd  
Account Number: 919020092654177  
IFSC Code:- UTIB0000024  
Branch : Satyanagar ,Bhubaneswar ,Odisha  
Thanks & Regards

--  
**Sanjay Mishra**  
Managing Director  
Mahakaleshwar Mines And Minerals Pvt.Ltd.  
+918720010300

**MIDEAST.pdf**  
171K

**Suresh Dhingra** <sdhingra@mescosteel.com>  
To: sanjay mishra <mmmpvtltd2@gmail.com>  
Cc: Odisha Sourcing <sourcing.odisha@gmail.com>

Mon, May 16, 2022 at 12:58 PM

Dear Mr.Mishra

Greetings from Mesco Steel !

We wish to inform you that we have got an extension for our Iron Ore Mines (Barbil) hence we will get your re-permission of your stack so that you can lift the material which could not happen last time due to non availability of railway rakes.

Please send us your Form L &amp; I to proceed further.

Regards

Suresh

Rakesh : Fyi pls.

  
TRUE COPY

[Quoted text hidden]

**sanjay mishra** <mmmpvtltd2@gmail.com>  
To: Suresh Dhingra <sdhingra@mescosteel.com>  
Cc: Odisha Sourcing <sourcing.odisha@gmail.com>

Mon, May 16, 2022 at 2:43 PM

4/18/23, 12:02 PM

Gmail - Refund of advance amount

Kind Attn : Suresh Dhingra Jee

45

This is for your kind information that we took the materials for Export and due to non-availability of your material we managed other material to load the Ship and you are aware that right now there is no market for Export .. therefore you are requested to reconsider the price so that we can sale to domestic plants.

Therefore, you are requested kindly arrange to revise the prices or refund the same to us.

We shall remain obliged for your kind consideration

Regards

[Quoted text hidden]

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**Suresh Dhingra** <sdhingra@mescosteel.com>  
To: sanjay mishra <mmmpvtltd2@gmail.com>  
Cc: Odisha Sourcing <sourcing.odisha@gmail.com>

Mon, May 16, 2022 at 4:53 PM

Dear Mr.Mishra,

As you are aware that the entire proceeds of Iron Ore are being deposited in the State Government hence refund from them seems impossible.

Reg revision of rates, we will accept your offer so that you can sell it to the domestic market and clear the book.

Please give your indicative rate and send form L & I at the earliest.

Regards

Suresh

[Quoted text hidden]

---

**Suresh Dhingra** <sdhingra@mescosteel.com>  
To: sanjay mishra <mmmpvtltd2@gmail.com>, Odisha Sourcing <sourcing.odisha@gmail.com>

Tue, May 31, 2022 at 12:39 PM

Dear Mr.Mishra,

Please revert on above matter so that we can get the re-permission in your favour and despatch can happen.

Please treat this as urgent.

Regards

Suresh

[Quoted text hidden]

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**Suresh Dhingra** <sdhingra@mescosteel.com>  
To: sanjay mishra <mmmpvtltd2@gmail.com>, Odisha Sourcing <sourcing.odisha@gmail.com>

Thu, Jun 9, 2022 at 3:49 PM

Dear Mr.Mishra,

Awaiting your reply ?

Suresh

[Quoted text hidden]

---

**sanjay mishra** <mmmpvtltd2@gmail.com>  
To: Suresh Dhingra <sdhingra@mescosteel.com>  
Cc: Odisha Sourcing <sourcing.odisha@gmail.com>

Sat, Jun 11, 2022 at 12:52 PM



TRUE COPY

Dear Sir,

<https://mail.google.com/mail/u/0/?ik=d8da2e2360&view=pt&search=all&permthid=thread-a:r7827021444164506578&simpl=msg-a:r78286739316...> 2/4

4/18/23, 12:02 PM

Gmail - Refund of advance amount

**ANNEXURE -A14**

As you are aware, due to the raise in export duties in iron ore fine with a hike of 50 % there is no market for export .Hence we cannot pay more than Rs 900 per Mt .So we request you to provide that much materials for which the amount already paid to you at the rate of Rs 900 per MT.We look forward to hearing from you.

Thanking you  
[Quoted text hidden]

46

**Suresh Dhingra** <sdhingra@mescosteel.com>

Thu, Jun 23, 2022 at 4:59 PM

To: sanjay mishra <mmmpvtltd2@gmail.com>, Odisha Sourcing <sourcing.odisha@gmail.com>

Dear Mr.Mishra,

No response received as yet ?. Please treat this as urgent since we need to request state government for this deal as funds were deposited to them as per statutory compliance.

Suresh

[Quoted text hidden]

**Odisha Sourcing** <sourcing.odisha@gmail.com>

Thu, Jun 23, 2022 at 7:43 PM

To: Suresh Dhingra <sdhingra@mescosteel.com>

Cc: sanjay mishra <mmmpvtltd2@gmail.com>

To,  
Mr. Suresh Dhingra  
Mideast Integrated Steel Limited

Sub: Re Consideration of the Material Price Purchased vide Contract No. MISL/CONTRACT/MMMPL-02/03/2020-21/124-D dated :- 03/04/2021. From Mideast Integrated

Respected Sir,

This is for your kind information and perusal, that we had purchased 3925.598 Mt @3233/- pmt ex Mines from Mideast Integrated Steels Ltd. vide above mentioned Contract and deposited the entire money to Prescribed bank account of MISL. Your good office had approved the Mining Permission against that contract **vide Form L N.L.42102211 dated 19/04/2021** but because of non-Placement of rake mining permission as well as Lifting Permission of MSIL got lapsed. Now MSIL has got the permission again from the Supreme Court to dispatch the material and we are ready to lift the material from the mines after Re-Permission of the same stack.

Further, you are also aware that Export Market viability has collapsed and with the 50% duty on Iron Ore Export we cannot conclude any deal, so we are planning to trade this material in Domestic Market. To enable the Domestic deal, 57% fe grade material price should reconsider with the reference of Market Price.

Therefore, you are requested kindly arrange to advise the concerned person to allow the permission of Iron Ore of 57% fe of equivalent quantity against the deposited amount and reconsidered price.

We shall remain obliged for your swift action and support.

Form I is attached for your reference .

[Quoted text hidden]

 **MESCO FORM I.pdf**  
141K

**sanjay mishra** <mmmpvtltd2@gmail.com>

Fri, Jun 24, 2022 at 10:38 AM

To: Suresh Dhingra <sdhingra@mescosteel.com>

Cc: Odisha Sourcing <sourcing.odisha@gmail.com>

Dear sir,

  
TRUE COPY

<https://mail.google.com/mail/u/0/?ik=d8da2e2360&view=pt&search=all&permthid=thread-a:r7827021444164506578&siml=msg-a:r78286739316...> 3/4

- 15.** These e-mails makes it clear about the payment made by the OC and its difficulty in taking delivery of the iron ores due to issue of railway wagons. It is pertinent to point out that at this stage the OC requested the CD to refund the amount because of the situation that arose during Covid and its inability to take delivery of the goods for the reasons stated above. It is also the stand of the OC that the market condition crashed globally; and therefore, he wanted certain re-adjustments which is evident from the e-mails as mentioned above.
- 16.** Since the OC could not take the delivery of the goods he sought for refund of the amount paid. The response of CD declining any such request for refund forced OC to initiate proceedings after issuance of Section 8 Demand Notice. It is admitted that no reply has been filed to Section 8 notice.
- 17.** Be that as it may, a detailed reply has been filed to the Petition countering all the stand taken by the OC. More particularly, emphasizing the fact that the amount was received in terms of the contract and paid over to the State Government in terms of the order of the Hon'ble Supreme Court; and Form-L and Form-I has been procured and furnished to the OC. It is OC's own peril that it could not take delivery of the goods at the relevant point of time; and therefore, the CD has no role to play in the present case for supply of goods or refund of amount as demanded.
- 18.** To buttress this argument, Mr. P. Nagesh, Ld. Sr. Counsel relied upon **Annexure A-15** at Page-47 of the Petition, which is a very comprehensive and detailed e-mail sent by the CD to the Deputy Director of Mines, Joda dated 24.06.2022. The same reads as follows:



**47 ANNEXURE -A15**  
MAHAKALESHWAR MINES & MINERALS PVT LTD <mmmpvtltd2@gmail.com>

**Request for allotment of Lapsed Quantity (against Permit No L 42102211/ Mines, dated 17.04.2021) of Mahakaleswar Mines and Minerals Pvt. Ltd.**

3 messages

**Asit Ray** <asitray@mescosteel.com>

Fri, Jun 24, 2022 at 3:55 PM

To: ddm Joda <ddm.joda@orissaminerals.gov.in>

Cc: mmmpvtltd2@gmail.com, rashmimangaraj@mescosteel.com, SURESH DHINGRA <sdhingra@mescosteel.com>

To

The Deputy Director of Mines,

Joda Circle, Joda, Keonjhar.

Sub: Request for allotment of Lapsed Quantity (Permit No L 42102211/ Mines, dated 17.04.2021).

Sir,

On basis of our application, M/s Mahakaleswar Mines and Minerals Private Limited (061313614921) has been allowed to remove Screened Fines (57.12% Fe) Quantity 3808.84 MT from Stack no 10AAA of Roida-I Iron Ore Mines to Banspani (BSPX) Railway Siding to JSW Paradeep (DDIP) Plot No 12C of JSW Paradeep Terminal Pvt. Ltd. under PPT, Paradeep Port - CHINA vide Transit Permit No L42102211/ Mines dated 17.04.2021 and Form I Permit No I42104943 dated 19.04.2021. The Agreed price was Rs 3233/- per MT (Including Royalty, DMF and NMET) vide Contract No MISL/CONTRACT/MMMPL-02/03/2020-21/124-C. In this regard the entire sale value (Compensation Amount Rs 93,84,104/- and Royalty+DMF+NMET Rs 29,29,876/-) was deposited on 16.04.2021 with the State Government. But unfortunately the buyer M/s Mahakaleswar Mines and Minerals Private Limited could not lift the material due to non-availability of rake within the permitted time of 23.05.2021. As the temporary permission of Roida-I Iron Ore Mines given by Hon'ble Supreme Court for lifting of the earlier excavated, processed and stacked Iron Ore prior to 01.01.2018 also expired on 23.05.2021, so we could not apply for re-permission.

Further Hon'ble Supreme Court of India in I.A. No 51759/2021 in W.P.(C) No. 114/2014, dated 20.04.2022, has extended the time granted earlier for disposal of balance stock of Iron Ore from Roida-I Iron Ore Mines by another six months i.e. till 19.10.2022. Looking at the current market price of Iron Ore, M/s Mahakaleswar Mines and Minerals Private Limited has requested Mideast Integrated Steels Ltd to reconsider the earlier contract price and go for a fresh sale contract based on the current market price against the earlier deposited material value with the State Government.

Therefore we request your good office to kindly consider our case and allow us to execute a fresh sale agreement with M/s Mahakaleswar Mines and Minerals Private Limited against the earlier deposited material cost with the State Government and apply for re-permission to lift the material from Roida-I Iron Ore Mines as per the present market price.

Thanks & Regards,

TRUE COPY

- 19.** A copy of the aforementioned e-mail has already been marked to the OC which it is not in dispute. A reading of this makes it clear that at no point of time, the amount paid over by the OC was retained by the CD. On the contrary, in terms of the contract, the money was paid over to the State Government in discharge of CD's liability in terms of the order of the Hon'ble Supreme Court and consequently Form-L and Form-I was issued giving permit to the OC to take delivery of 3808.840 metric tonnes of iron ore from the site to the railway yard, which could not happen because of various reasons stated by the OC. There is therefore no fault of the CD.
- 20.** It is the stand of the CD that at no point of time the CD was privy to any form of difficulty that the OC faced in taking control of his goods. In that regard, the CD further pleads that they assisted the OC in writing to the Deputy Director of Mines on 24.06.2022 as above pleading for issuance of fresh Sale Agreement to enable the OC to take delivery of the goods due to the difficulty faced. Of course, this did not find favor with the Department of Mines and therefore, the OC cannot find fault with the CD. On this premise, it is now pleaded by the CD that there is no case of debt and default. In any event this transaction does not attract the provisions of Section 9 of IBC, 2016.
- 21.** On reading of the above factual position, it is very clear that the contract which is signed by the parties is valid. Payment has also been validly transferred to the CD and consequent to the order of the Hon'ble Supreme Court, that payment has been made over to the State Government resulting an issue of Form-L and Form-I. The permit has been issued along with the transit permit in favor of the OC and therefore, he becomes the owner of the goods on such valid permission and permit given. Therefore, the role of the CD becomes irrelevant once the Transit Permit and the Permit is issued in favor of OC who is then the owner of the goods paid for.



- 22.** The difficulty faced by the OC in taking delivery of the goods due to issue of railway wagon cannot be attributed to the CD because they are only facilitator at that stage. In any event, since the payment has already been made and the permit is issued and the OC becomes the owner of the goods, the question of default thereafter does not arise. The Petitioner has to make his own arrangements to take the delivery of the goods in the manner which he feels best.
- 23.** As a result, we find no reason to hold that there was refusal or denial by the CD at any point of time. The question of refund by the CD does not arise. The right to the goods is already passed on to the OC; and therefore, the question of refund by the CD does not arise; and consequently, no case arises for debt and default.
- 24.** Various decisions have been relied upon by the Ld. Counsel for the OC on forfeiture clause or loss suffered. However, the same does not apply to this case because the factual position differs on the merits of those cases referred. It is inapplicable and hence are not addressed. The facts are very clear that the ownership has been transferred to OC.
- 25.** The e-mail dated 24.06.2022 sent by the CD to the Deputy Director of Mines, Joda copy of which was marked to the OC, makes it clear that the right, title and interest is already passed on to the OC. It is for the OC to take delivery or not. In such circumstances the CD has no role to play thereafter.
- 26.** Accordingly, we find no merits to this case.

Hence, **(IB)-457(PB)/2023** stands **dismissed**.

**Sd/-**  
**(RAMALINGAM SUDHAKAR)**  
**PRESIDENT**

**Sd/-**  
**(AVINASH K. SRIVASTAVA)**  
**MEMBER (TECHNICAL)**