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STEEL & MINES DEPARTMENT

NOTIFICATION

The 26th June, 2014

S.R.O. No.256/2014—Whereas, the State Government vide this Department Memo No. 8620/SM., dated the 5th December, 2012, issued in exercise of rights under clause (m) of sub rule (1) of rule 27 of the Mineral Concession Rules, 1960, directed that at least 50% of the iron ore lumps and 50 % of fines won from the mines within the State in any month, but not put to captive use by the lessees, shall be sold to the stand alone mineral based industries located in the State, limited to the requirement of such user industries, in an equitable manner, on payment of the prevailing fair market price by the user industries to the mining lessees.

And, Whereas, the validity of the Memo No. 8620/SM., dated 5th December, 2012 was questioned in W.P.(C) Nos.20774, 17682, 21482, 21420, 21640, 21664, 16260, 22180 and 21670 of 2013 before the Hon'ble High Court of Orissa.

And, Whereas, the Hon'ble Court vide judgment and final order dated the 2nd April, 2014 upheld the Memo No. 8620/SM., dated the 5th December, 2012 as being valid exercise of right of pre-emption under rule 27(1)(m) of MCR, subject to the State evolving a mechanism to give notice to the lessees of quantum of minerals to be purchased and payment of price within a reasonable time.

And, Whereas, the Hon'ble Court summed up its conclusions as under:—

(i) *“Ownership of mineral is vested in the State and it has statutory preferential right to purchase the mined mineral against fair market price at the time of pre-emption;*

(ii) *Right of pre-emption must be exercised by State itself and price fixed by it but benefit of such right can be transferred in its discretion;*

(iii) *Impugned memo lacks procedural mechanism by which State directly exercises its right by fixing price, quantum of mineral to be purchased and*

beneficiary thereof but this deficiency can be cured by mechanism being laid down which is mandatory for validity of exercise of pre-emption right.”

And, Whereas, the Hon'ble Court also directed that such mechanism may be notified within three months, else the Memo No. 8620/SM., dated the 5th December, 2012 will cease to operate.

Therefore, the State Government, hereby, lays down the procedure for pre-emption of iron ore lumps and fines by the State and its subsequent transfer to the mineral based user industries located inside the State:—

1. The Director of Mines, Odisha shall be the nodal officer for implementation of the scheme of pre-emption of iron ore lumps and fines in conformity with the provisions of Memo No 8620/SM., dated the 5th December, 2012, as amended from time to time, and the subsequent transfer of the pre-empted minerals amongst the genuinely needy user industries located in the State, subject to over all control of the State Government.

2. Stand alone mineral based industries located in the State desirous of purchasing iron ore lumps and fines for use in their plants within the State shall make application to the Director of Mines, Odisha in the format prescribed by the State Government in this behalf along with a declaration indicating the requirement of iron ore lumps and fines and the grade thereof during the upcoming quarter. While assessing the requirement of the user industry, the ore requirement of the applicant shall be reduced by the quantity raised from the mine, if any, leased out to such applicant or to any person under the control of such applicant. The Director of Mines shall consolidate the quarterly requirement of all the State based industries to know the quantity of iron ore lumps and fines to be purchased by the State from stand alone mines located inside the State in the upcoming quarter in exercise of its right of pre-emption.

3. The application of the interested mineral based industry shall be accompanied by self attested copies of income tax return (for immediately completed preceding financial year), PAN, Valid Sales Tax/ VAT Registration Certificates. Such documents shall be kept valid by the applicant from the time of submission of the application till the completion of lifting and payment of the entire consideration for the purchased ore. The Director of Mines may also require the applicant to furnish details of the consideration paid by the applicant for purchase of iron ore lumps and fines of different grades in the immediately preceding quarter.

4. The applicant shall also furnish to the Director of Mines, an affidavit duly sworn before an Executive Magistrate or Notary Public to the effect that the iron ore lumps and fines purchased under this scheme shall be used exclusively in its mineral based industry located inside the State and would not be resold, transferred, exported or otherwise diverted.

5. The quantity of iron ore lumps and fines required by the State based industries in the upcoming quarter as determined above shall be the quantum that shall be pre-empted from the stand alone mining lessees in the State. The aforesaid quantum will be purchased from amongst the stand alone mining lessees in proportionate quantities. However, the right of pre-emption shall not be exercised in respect of mining lessees who have subsisting agreements with State based industries for supply of iron ore to the extent of 50% of their production or more in any quarter. The mine wise quantity of iron-ore lumps and fines to be pre-empted by the State shall be placed by the Director of Mines before the State Government for approval. The quantity to be pre-empted from each mine shall be determined keeping in view the principles of equity, fairness and justice and shall not exceed 50% of the produce of any mine in any quarter.

6. After the State Government approves the quantum of mineral to be purchased from each mine in the State in exercise of right under rule 27(1)(m) of MCR, 1960 and the price payable, the Director of Mines shall issue notice in writing to the mining lessees indicating the quantum of iron ore lumps and fines to be purchased, the price thereof, the nominee of the State Government (i.e. the State based stand alone mineral industry who shall take delivery of the pre-empted minerals and make payment of the purchase price on its behalf) as well as the time and place at which the pre-empted minerals shall have to be delivered. Such notice of pre-emption in respect of any quarter shall be issued to the lessee within 10 days of the commencement of the first month of such quarter giving at least 30 days time to the lessee to deliver the pre-empted minerals. The nominee(s) in respect of a mine shall be determined on the basis of the requirement of grade/quantity of minerals and proximity of the end-use plant from the mine. The State Government may nominate one or more nominees in respect of a mine. Such nominee(s) shall be required to furnish an unconditional and irrevocable Bank guarantee in favour of the Director of Mines for a sum equivalent to 10% of the pecuniary value of the minerals to be lifted by it in the upcoming quarter. The aforesaid Bank guarantee shall be maintained all

through the period during which the nominee participates in this scheme. The place of delivery shall ordinarily be the mine head unless otherwise decided by the lessee and the nominee(s). A copy of the pre-emption notice issued to the lessee of a mine shall also be endorsed to the nominee determined in respect of such mine.

7. The price payable to the stand alone mining lessees under this scheme shall be the fair market price prevailing on the date of pre-emption. The sale price of respective grades of iron ore as published by the Indian Bureau of Mines from time to time in 'Monthly Statistics of Mineral Production' for the purpose of computation of royalty under rule 64D of the Mineral Concession Rules, 1960, shall be the basic minimum purchase price of minerals under this scheme. The price payable under subsisting sale purchase agreements, if any, entered into between such lessee and its customers shall also be taken into account for fixation of the purchase price of the pre-empted minerals for a given month/quarter by the Government.

8. The lessee shall promptly deliver the pre-empted minerals to the nominee(s) of the State Government in accordance with the specifications contained in the notice of pre-emption issued to the lessee by the Director of Mines with regard to the quantum, grade, price, place and time of delivery. The price of the minerals, as specified in the notice of pre-emption, shall be paid by the nominee before taking delivery of the minerals, unless agreed otherwise between the lessee and the nominee.

9. The quantity of iron ore lumps and fines to be delivered under this scheme shall be sampled, analysed, weighed at the delivery point and certified by the jurisdictional Deputy Director of Mines/Mining Officer. It shall be open to the nominee to inspect the minerals pre-empted by the State and earmarked for supply to such nominee after given 7 days' prior notice in writing to the concerned lessee and jurisdictional Deputy Director of Mines/Mining Officer.

10. The lessee shall have good and valid title, free from any lien and encumbrances over the minerals made over to the State Government or its designated nominee pursuant to this notification. The mineral shall also be royalty paid.

11. Except as provided above, the State Government/Director of Mines/Deputy Director of Mines/Mining Officer shall not be liable to the lessee or the user industry/nominee for any incidental, indirect or consequential damages connected with or resulting from any commission or omission by the lessee or the user industry.

12. The decision of the Director of Mines, Odisha on the quality, quantity and price of minerals pre-empted and transferred under this scheme shall be final and binding on the lessee as well as the nominee.

13. This scheme shall operate on a quarterly basis and shall be subject to the requirement of minerals by the State based industries. The lessee shall be free to dispose of or otherwise deal with the minerals that are not subjected to pre-emption.

14. In the event of the nominee in respect of a mine failing to take delivery of the specified quantum of pre-empted minerals allotted to it, Director of Mines may designate another nominee in respect of such mine under intimation to the State Government. Further, the nominee failing to take delivery of the pre-empted minerals allotted to it shall not be entitled to participate in this scheme during the next quarter, and the Bank guarantee furnished by it will be liable for forfeiture. If for any reason, the pre-empted minerals are not lifted by the nominee (original or substituted) then the Director of Mines shall report the matter to the State Government for further directions.

15. All notices issued in pursuance of this scheme shall be addressed to the lessee at its last indicated address in the returns filed with the State Government/Directorate of Mines, while the address of the nominee/applicant shall be as provided in the application at Para- 2 hereinabove and such notices shall be served either by hand or by registered post acknowledgment due. If a notice is served in the foregoing manner, then the same shall be deemed to have been duly served.

16. All disputes arising out of or in connection with this scheme shall be sought to be amicably resolved, failing which the courts at Bhubaneswar, Odisha alone shall have the jurisdiction to decide the dispute(s).

17. The terms and conditions specified herein shall be binding on the lessees as well as on the user-industries/nominee(s) participating in this scheme and shall prevail over the instructions issued vide Memo No. 8620/SM., dated the 5th December, 2012 or in pursuance thereto to the extent of any repugnancy.

[No.4822-VSL-13/2012/SM.]

By Order of the Governor

G. SRINIVAS

Commissioner-*cum*-Secretary to Government