2025:AHC:229198-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 20970 of 2018

AFR

Reserved on 16.09.2025

Delivered on 19.12.2025

Shri. Manjeet Chawla

…..Petitioner(s)

Versus

State of U P and 2 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Ashish Malhotra, Jitendra Shankar Pandey, Tarun Varma
Counsel for Respondent(s)	:	Archana Singh, C.S.C.

HON'BLE SARAL SRIVASTAVA, J.
HON'BLE AMITABH KUMAR RAI, J.
(Delivered by Hon'ble Saral Srivastava,J)

1. Heard learned counsel for the petitioner and Sri Rajeshwar Tripathi, learned Chief Standing Counsel-II for the State-respondents.

2. The petitioner by means of the present writ petition has prayed for the following relief:-

> *"(a). Issue a writ, order or direction in the nature of certiorari to quash the letter of intent dated 04.05.2018 bearing nos.343/Mining/2018 & 344/Mining/2018 to the extent that a demand for contribution towards DMF has been raised.*
>
> *(b). Issue a writ, order or direction in the nature of certiorari to quash para-6 of the letter dated 21.05.2018 to the extent demand is raised for compulsory contribution towards DMF."*

3. During the pendency of the writ petition, respondent no.3-District Magistrate passed an order dated 01.06.2018 by which he has directed the petitioner to deposit 10% of the royalty in District Mineral Foundation (DMF) which has been assailed by the petitioner by filing Amendment Application, which was allowed by this Court by order dated 03.07.2019. Accordingly, petitioner amended the writ petition.

4. The facts of the case, in brief, are that Directorate of Geology & Mining, Lucknow and its subordinate offices issued E-Tender No.2858/ Mineral/E-Tender/2018 dated 09.03.2018 inviting offers for the auction of limestone, a major mineral, which was obtained during the blasting/digging and levelling operation for the purpose of expansion of Obra 'C' (2 x 660 MW) Power Project situated in District Sonbhadra which was divided in three blocks, for which respondent-State fixed minimum amount as 'reserve price'.

5. It is stated that the value of the mineral was mentioned as 'royalty' in the auction notice which was meant as 'sale price' of the mineral and not the 'royalty' as understood under the provisions of Mines and Minerals (Regulation & Development) Act, 1957 (hereinafter referred to as the 'MMRD Act').

6. It is further stated that as per the auction notice, the applications submitted before 5:00 P.M. on 21.03.2018 were to be considered, but certain bids had been submitted even after the last date notified. The petitioner pointed out the said fact by notice dated 23.03.2018 to the authorities. The authorities on being apprised about the aforesaid discrepancy, cancelled the tender notice dated 24.03.2018 and invited fresh offers by issuing E-Tender Notice on 24.03.2018 at the three locations detailed in the said notice. It was mentioned in the said notice that successful tenderer would have to pay tax and other amount including DMF as per the rules.

7. The petitioner being interested, submitted its bid on 07.04.2018 for all the three locations described as Part-I, Part-II and Part-III. Subsequently, letters dated 04.05.2018 bearing no.343/Mines/2018 and

no. 344/Mines/2018 were issued to the petitioner declaring the petitioner as the highest bidder for the limestone described as Part-II and Part-III respectively in the public notice. It is stated that the aforesaid letters dated 04.05.2018 were issued only after the Government granted approval vide letter dated 02.05.2018, as is evident from perusal of the Letter of Intent (hereinafter referred to as 'LOI') itself.

8. According to the petitioner, he had quoted an amount of Rs.777.70 per cubic meter as value of the mineral against the reserve price of Rs.275/- per cubic meter for the mineral stacked and described as Part-II lying at the banks of the river within the given coordinates. The quantity of mineral was 48,300 per cubic meter.

9. Similarly, for the quantity of 1,50,760 per cubic meter, the petitioner's bid was for an amount of Rs.12,20,85,448/- as the value of mineral. The petitioner further stated that the respondents vide aforesaid letter dated 02.05.2018 demanded deposit of balance bid amount after adjusting the earnest money already deposited. The demand of Rs.1,25,20,970/- and Rs.4,06,95,150/- were raised as contribution towards DMF for the mineral stacked and described as Part-II and Part-III respectively.

10. The petitioner being aggrieved by the demand of contribution towards DMF has preferred the present writ petition on various grounds which shall be noted at the appropriate place.

11. The respondent has filed a counter affidavit contending *inter-alia* that the condition/clause no.16 of the terms and conditions of notice/advertisement dated 24.03.2018 provides that the bidder together with the other deposits shall also deposit the amount towards DMF contribution. It is further stated that the petitioner since beginning i.e. before the participation in the tender proceeding was fully aware of the condition no.16 mentioned in the advertisement dated 24.03.2018. The petitioner had participated and succeeded in obtaining the mineral in his favour, and petitioner instead of depositing DMF contribution as

stipulated in condition no.16 of the tender/advertisement, approached this Court by filing the present petition.

12. The respondent further stated that the object to establish the District Mineral Foundation (DMF) is to work for the interest and benefit of persons and areas affected by mining related operations. The said object is specifically mentioned in Section 9-B (2) of the MMRD Act. The respondent further stated that Section 4 of the MMRD Act specifically provides that no person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease granted under the MMRD Act and the Rules made thereunder. It further provides that no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of MMRD Act and the Rules made thereunder.

13. The further case of the respondent is that Section 3 (d) of the MMRD Act defining 'mining operation' embodies the word 'winning' which simply means 'extracting a mineral' and is used generally to indicate any activity by which a mineral is secured. The respondent further stated that the petitioner had secured/obtained the mineral by participating in E-Tender proceedings, therefore, it comes under the purview of 'mining operation'.

14. The respondent categorically denied that the petitioner has been permitted only to transport the mineral which do not come within the purview of 'mining operation'.The further case of the respondent was that the term 'lease' as it occurs in the definition of mining lease provided in Section 3(c) of the MMRD Act is not used in narrow sense in which it is defined in Section 105 of the Transfer of Property Act, 1882 (hereinafter referred to as the 'Act, 1882').

15. The respondent further stated that in pursuance to the interim order granted by this Court, the petitioner submitted the security in the form of fixed deposit of Rs.1,59,64,836/-, and after submission of the

said bank guarantee, the permission to remove the limestone was granted to the petitioner on 26.06.2018.

16. The petitioner filed rejoinder affidavit denying the averments contained in the counter affidavit. The petitioner also stated that the demand of DMF contribution is not covered under Section 9-B of the MMRD Act nor it is covered under the mining lease or mining operations or prospecting licence. It is further stated that Rule 2 of the Mines and Minerals (Contribution to District Mineral Foundation) Rules, 2015 (hereinafter referred to as the 'Rules, 2015') prescribes the amount of contribution to be made towards DMF. It is stated that Rule 2 of Rules, 2015 states that the liability to pay DMF is of every holder of mining lease or a prospecting licensee-cum-mining, but the auction in favour of the petitioner does not fall in any of the aforesaid category, therefore, the demand of DMF contribution is illegal, erroneous and arbitrary.

17. It is further stated that the participation of the petitioner in the tender proceeding and condition no.16 in the advertisement dated 24.03.2018 did not create any legal right in favour of the respondents to demand the DMF contribution which is without jurisdiction.

18. Challenging the demand of DMF contribution, learned counsel for the petitioner has contended that the term 'royalty' mentioned in the advertisement is in fact the value of the 'mineral' and is meant as 'sale price' of the mineral and not 'royalty' as understood under the MMRD Act. It is submitted that DMF is a statutory fund, and since the value of mineral is the 'sale price' of the mineral, and in fact it is a sale and the term 'royalty' as mentioned in the advertisement does not have the ingredients of 'royalty', therefore, use of the term 'royalty' would not attract Section 9-B of the MMRD Act as it is used in the sense of 'sale value' of the mineral and not as 'royalty' as understood in the context of MMRD Act

19. It is contended that no mining lease was granted by the State Government to the petitioner and the reason being that extraction of

limestone in the present case was only an incidental consequence of infrastructure development rather than an act undertaken with the sole purpose of 'winning of minerals'. It is contended that Section 9-B of the MMRD Act would be attracted only when the operations undertaken are with the object of 'winning minerals', and such operations are undertaken after obtaining a mining lease. It is contended that in absence of the aforesaid necessary ingredients, the work/activity undertaken by the petitioner would not be governed by the provisions of Section 9-B of the MMRD Act.

20. It is further contended that the DMF has been set up with the objective of undertaking activities at the cost of mining leaseholder to benefit the areas as well as people that are directly or indirectly affected and impacted due to mining operations, as is evident from sub-section (2) of Section 9-B of the MMRD Act.

21. It is further submitted that the said understanding of the MMRD Act is also evident from the perusal of the Rule-2(b) & (c) of the District Mineral Foundation Trust Rules, 2017 (hereinafter referred to as the 'Rules, 2017') framed by the State of U.P., wherein 'affected area' and 'affected persons' are defined. Accordingly, it is submitted that the very concept of DMF requires that there are continuous mining operations and not an incidental extraction of minerals as in the later case, there would be no impact on the persons and areas as is otherwise in the case with full fledged mining operations.

22. It is further urged that under the provisions of MMRD Act, the contribution to the DMF is to be based on percentage of royalty and not based on any auction amount.

23. It is submitted that the percentage has been prescribed by the Central Government vide Notification dated 17.09.2015, which provides 10% of the 'royalty' computed under the second schedule. It is further contended that the contribution is to be made only by holder of a mining lease undertaking mining operations.

24. Refuting the aforesaid submission, Sri Rajeshwar Tripathi, learned Chief Standing Counsel-II submits that it is not disputed that the limestone for which the tender notice was issued is a mineral. It is contended that once it is a mineral, it would be regulated by MMRD Act, and the term 'royalty' mentioned in the advertisement which the petitioner has to pay for obtaining the limestone have all the ingredients of 'royalty' as used in MMRD Act and is not a 'sale' of the mineral, therefore, the contention of the learned counsel for the petitioner that though the term 'royalty' has been mentioned in the advertisement, but in fact, it is 'sale value of the mineral' is misconceived and based upon misinterpretation of the law.

25. He further contends that Section 4 of the MMRD Act provides that no person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder. He further submits that Section 4 (1) (A) of the MMRD Act provides that no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of MMRD Act and the Rules made thereunder.

26. It is contended that the mining operation as defined in Section 3(d) of the MMRD Act is to be construed with reference to the MMRD Act, and thus, the activity which has been undertaken by the petitioner under the E-Tender Notice comes within the purview of 'mining operation', therefore, the petitioner is liable to pay contribution towards DMF. He further contends that the term 'winning any mineral' occurring in Section 3(d) of the MMRD Act is also to be construed liberally in reference to the object of MMRD Act, and it simply means 'extracting mineral' and is used generally to indicate any activity by which a mineral is secured. He contends 'extracting' means drawing out or obtaining. Accordingly, he contends that the word 'winning' therefore, would imply extracting mineral and securing it by any means. Accordingly, he contends that the

petitioner's contention that since he has only been permitted to transport 'mineral' which activity does not come within the purview of 'mining operation', therefore, he is not liable to pay DMF contribution lacks substance and is against the spirit of the MMRD Act.

27. He further contends that the object of establishing the DMF is to benefit the areas as well as people affected by mining operation, and in the instant case, the activity of the petitioner falls within the purview of 'mining operation',therefore, the petitioner is liable to pay DMF contribution. It is submitted that Section 9-B of the MMRD Act is specific, unambiguous and is a benevolent provision introduced for the purpose of welfare of the people and for the benefit of the areas that are directly or indirectly affected and impacted due to mining operations, and in the instant case, the petitioner falls within the purview of Section 9-B (5) of the MMRD Act. Thus, the contention of the learned counsel for the petitioner that the concept of DMF is that there are continuous mining operation and not incidental extraction of mineral, as in the later case there would be no impact on the person and the areas as is otherwise in the case with full fledged mining operation is misconceived and not supported by any material on record. He contends that the provisions of the Act cannot be interpreted against the spirit and purpose for which it has been enacted.

28. Learned Chief Standing Counsel-II further submits that it is not disputed that Condition no.16 of the E-Tender Notice/Advertisement clearly stipulates that the petitioner is liable to pay contribution towards DMF. He submits that the petitioner knowingly well about the said condition of the advertisement, voluntarily participated in the E-Tender proceeding and thereafter, he voluntarily accepted the LOI dated 04.05.2018 which also contains the similar condition in Clause-3 which provides that petitioner is liable to pay Rs.4,06,95,150/- towards DMF contribution, therefore, the petitioner cannot turn around and deny his liability to pay the contribution towards DMF. He further submits that condition stipulated in the E-Tender notice as well as LOI for payment of DMF is neither against any provision of MMRD Act nor is against the

public policy, therefore, the petitioner is under obligation to pay the contribution towards DMF fund which is a condition under the E-Tender notice and the petitioner knowingly well about this condition participated in the tender, and based on which LOI had been issued to the petitioner, which the petitioner also accepted voluntarily, therefore, the petitioner cannot wriggle out of the said condition.

29. He lastly contends that the royalty demanded by the respondents is rightly calculated, and there is no illegality in it, therefore, the contention of the learned counsel for the petitioner disputing the calculation of the royalty is misconceived and has no substance in the eye of law.

30. We have considered the rival submissions advanced by the learned counsel for the parties and perused the record.

31. The undisputed facts as emanate from the record are that E-Tender Notice/Advertisement was issued on 24.03.2018 for auction of limestone divided in three blocks (A, B & C) which was found while expansion of Obra 'C' (2 x 660 MW) Power Project situated in District Sonbhadra during levelling of the site. The petitioner applied pursuant to the said E-Tender notice and was declared successful in obtaining the bid for Block-III and Block-II. The petitioner also does not dispute the fact that E-Tender Notice/Advertisement contained a condition in Clause-16 that successful bidder is required to pay contribution towards DMF fund. Clause-16 of the E-Tender Notice/Advertisement dated 24.03.2018 is being reproduced below:-

> *"निविदादाता द्वारा राज्य सरकार अथवा केन्द्र सरकार द्वारा निर्धारित कर एवं शुल्क यथा सम्पूर्ण रायल्टी का 2.04 प्रतिशत आयकर (टी०डी०एस०), सम्पूर्ण रायल्टी के सापेक्ष नियमानुसार देय डी०एफ०एफ० की धनराशि, सी०एस०आर०, नियमानुसार स्टाम्प पेपर तथा शक्तिनगर विशेष क्षेत्र प्राधिकरण, सोनभद्र (साडा) सम्बन्धित उपकर आदि भी जमा करना अनिवार्य होगा।"*

32. It is also evident from the condition no.3 of the LOI issued to the petitioner that the petitioner is liable to pay contribution amounting to Rs.4,06,95,150/- towards DMF fund besides the other amount which the petitioner is liable to pay under different heads.

33. Now, in the light of aforesaid facts, the Court proceeds to consider the submission advanced by the learned counsel for the parties.

34. According to the petitioner, the term ‘royalty’ occurring in the advertisement as well as in the LOI in fact is meant as ‘sale price’ of the mineral and not ‘royalty’ as understood under the MMRD Act, whereas the respondent-State disputes the aforesaid contention. In order to understand whether the term ‘royalty’ is meant as ‘sale price’ of the mineral as contended by the petitioner or in fact the ‘royalty’ as understood under the MMRD Act as contended by the learned Chief Standing Counsel-II, it would be apt to reproduce paragraph nos.99 to 104 of the judgement of Apex Court in the case of ***Mineral Area Development Authority & Another Vs. Steel Authority of India and Another, 2024 (10) SCC 1:-***

> *“99. At the outset we clarify that in this reference, we are dealing with "royalty" in the context of the MMDR Act. Royalty is generally understood as compensation paid for rights and privileges enjoyed by the grantee. It has its genesis in the agreement entered into between the grantor and grantee. In Inderjeet Singh Sial v. Karam Chand Thapar, this Court observed that royalty is equivalent to the expression "jura regalia" or "jura regia". Jura regalia is defined as royal prerogatives or rights, 128 For centuries, gold and silver mines (also called as royal metals) in the United Kingdom were treated as belonging to the Crown. Royal metals could be mined only after payments in the form of royalties were made to the Crown. The use of the word "royalty" underwent change in the United Kingdom with the decentralisation of the sovereignty which was absorbed by the landowners. Land ownership was concentrated in the hands of landowners, who conceded the right to work mines to lessees in return for consideration which took the form of dead rent and royalties.*
>
> *100. This Court has had occasion to analyse the meaning of the expression "royalty" in its decisions. In H.R.S. Murthy v. Collector, a Constitution Bench observed that royalty connotes a payment made for materials or minerals won from land. In D.K. Trivedi & Sons v. State of Gujarat, the distinction between "royalty" and "dead rent" was explained thus: (D.K. Trivedi case, SCC p. 54, para 39)*
>
> > *"39. In a mining lease the consideration usually moving from the lessee to the lessor is the rent for the area leased (often called surface rent), dead rent and royalty. Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain*

amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called "royalty". It may, however, be that the mine is not worked properly so as not to yield enough return to the lessor in the shape of royalty. In order to ensure for the lessor a regular income, whether the mine is worked or not, a fixed amount is provided to be paid to him by the lessee. This is called "dead rent". "Dead rent" is calculated on the basis of the area leased while royalty is calculated on the quantity of minerals extracted or removed. Thus, while dead rent is a fixed return to the lessor, royalty is a return which varies with the quantity of minerals extracted or removed.

101. Minerals are exhaustible and finite resources. Each quantity of mineral removed leads to the depletion of the mineral stock of the mine. Under a mining lease, a lessee acquires a right or interest in minerals. This right or interest allows the lessee to extract minerals and consume them. Royalty is a payment made by the lessee to the lessor or proprietor of the minerals for the removal of minerals. Royalty also serves to compensate the lessor for the degradation of the value of the mine because of the extraction of minerals.

102. In Bherulal v. State of Rajasthan, a Division Bench of the Rajasthan High Court explained the concept of royalty in the following terms:(SCC OnLine Raj para 8)

"8... In Wharton's Law Lexicon, "royalty" is defined as 'payment to a patentee by agreement on every article made according to his patent; or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every on or other weight raised'. The present case is of the third kind, namely, payment to the owner of minerals for the right of working the same. This payment is based on the produce, and the rate is fixed as so much per ton or other weight. It is clear that royalty has nothing to do with where the purchaser is taking the mineral, or to whom he is going to sell it, whether at the place where the mine is situated or at some place hundreds of miles away. It is clear, therefore, that royalty is a charge by the owner of minerals from those to whom he gives the concession to remove them, and the charge is on production, the rate being fixed according to weight." (emphasis supplied)

103. The essential characteristics of royalty are that:

(i) it is a consideration or payment made to the proprietor of minerals, either the government or a private person;

(ii) it flows from a statutory agreement (a mining lease) between the lessor and the lessee;

(iii) it represents a return for the grant of a privilege (to the lessee) of removing or consuming the minerals; and

(iv) it is generally determined on the basis of the quantity of the minerals removed.

104. In comparison, dead rent acts as a deterrent against a leaseholder cornering a mining lease and keeping the mineral resources idle. Similar to royalty, dead rent is also a statutory imposition and an integral part of the mining lease, but it generally does not serve as a consideration for the removal or consumption of minerals. The dead rent is determined on the basis of the area of land covered by the lease. Imposition of dead rent ensures that the proprietor obtains a fixed rent from the lessee even if the mine remains unworked. Therefore, dead rent is not in addition to royalty but an alternative."

35. The essential characteristics of 'royalty' have been delineated by the Apex Court in paragraph no.103 of the aforesaid judgement.

36. Now, in order to find out whether the 'royalty' in the instant case meets the essential characteristics of 'royalty' as defined in paragraph no.103 of the aforesaid judgement, the Court proceeds to analyse the facts on record whether the term 'royalty' used in the instant case possesses all essential characteristics of 'royalty' as laid down in the aforesaid judgement.

37. At this stage, it would be appropriate to reproduce the table contained in E-tender notice describing the details of stored limestone:-

"भण्डारित मुख्य खनिज लाइम स्टोन का विवरणः–

क्र० सं०	स्थल का विवरण, जहां पत्थर भण्डारित है	खनिज का नाम	भण्डारित खनिज की मात्रा (घ०मी में)	भण्डारित खनिज की रायल्टी दर (प्रति घन मी०)	भण्डारित खनिज की कुल रायल्टी/ न्यूनतम आरक्षित मूल्य (रू० में)	अर्नेष्ट मनी (कॉलम-6 में अंकित सकल धनराशि का 25 प्रतिशत (रू० में)
1	2	3	4	5	6	7
1	जनपद-सोनभद्र, तहसील-राबर्ट्सगंज स्थित डकहिया पहाड़ी ओबरा में - "सी" (2X660 मेगावाट) तापीय विस्तार परियोजना के अन्तर्गत समतलीकरण/	मुख्य खनिज लाइम स्टोन	42,852	275.00	1,17,84,300.00	29,46,075.00

	खुदाई के दौरान निकले मुख्य खनिज लाइम स्टोन खण्ड-1- पानी टंकी के पास जी०पी०एस० रीडिंग 24^0 27’ 32”, 82^0 59’ 2.7”					
2	जनपद-सोनभद्र, तहसील-राबर्ट्सगंज स्थित डकहिया पहाड़ी ओबरा में - "सी" (2X660 मेगावाट) तापीय विस्तार परियोजना के अन्तर्गत समतलीकरण/ खुदाई के दौरान निकले मुख्य खनिज लाइम स्टोन खण्ड-2- नदी के किनारे के पास जी०पी०एस० रीडिंग 24^0 27’ 35.3”, 82^0 58’ 30.7”	मुख्य खनिज लाइम स्टोन	48,300	275.00	1,32,82,500.00	33,20,625.00
3	जनपद-सोनभद्र, तहसील-राबर्ट्सगंज स्तित डकहिया पहाड़ी ओबरा में - "सी" (2X660 मेगावाट) तापीय विस्तार परियोजना के अन्तर्गत समतलीकरण/ खुदाई के दौरान निकले मुख्य खनिज लाइम स्टोन खण्ड-3(क) प्रस्तावित स्वीच यार्ड के पास जी०पी०एस० रीडिंग 24^0 27’ 24.5”, 82^0 58’ 41.8” खण्ड-3(ख) प्रस्तावित स्वीच यार्ड के पास जी०पी०एस० रीडिंग 24^0 27’ 26.4”, 82^0 58’ 40.9” खण्ड-3(ग) प्रस्तावित स्वीच यार्ड से पहले पहाड़ी की तरफ जी०पी०एस रीडिंग 24^0 27’ 23”, 82^0 58’ 45.9”	मुख्य खनिज लाइम स्टोन	1,50,760	275.00	4,14,59,000.00	1,03,64,750.00

38. It is evident from Column-5 of the aforesaid table that the minimum royalty for the stored mineral was Rs.275/- per cubic meter.

The royalty/value price is mentioned in Column-6 of the aforesaid index. Similar table has been reproduced in respect to Block 3A in the LOI dated 04.05.2018 appearing at page-37 of the paper book mentioning in Column-4, the minimum royalty of the stored mineral was Rs.275/- per cubic meter. The price quoted by the petitioner is mentioned in Column-5 as Rs.809.80/- per cubic meter and total royalty which the petitioner was liable to pay as quoted in Column-6 was Rs.12,20,85,448/-.

39. The LOI further recites that it was being issued on the terms and conditions enumerated in the LOI, and Clause-3 prescribes 'royalty' and DMF contribution which the petitioner was liable to pay besides other amount under different heads. Clause-3 of the LOI is reproduced herein below:-

> *"निविदादाता द्वारा राज्य सरकार अथवा केन्द्र सरकार द्वारा निर्धारित कर एवं शुल्क यथा सम्पूर्ण रायल्टी रू0 12,20,85,448.00 (बारह करोड़ बीस लाख पचासी हजार चार सौ अड़तालिस रूपये मात्र) का 2.04 प्रतिशत आयकर (टी०डी०एस०) रू0 24,90,543.00 (चौबीस लाख नब्बे हजार पांच सौ तैतालिस रूपये मात्र), सम्पूर्ण रायल्टी के सापेक्ष नियमानुसार देय डी०एफ०एफ० रू0 4,06,95,150.00 (चार करोड़ छः लाख पन्चानबे हजार एक सौ पचास रूपये मात्र) की धनराशि, सी०एस०आर०, नियमानुसार स्टाम्प पेपर तथा शक्तिनगर विशेष क्षेत्र प्राधिकरण, सोनभद्र (साडा) सम्बन्धित उपकर रू0 7,53,800.00 (सात लाख तिरपन हजार आठ सौ रुपये मात्र) भी जमा करना अनिवार्य होगा।"*

40. So, the royalty as mentioned in the E-Tender notice and LOI is in fact a consideration paid to the Government for the mineral, and thus, the first characteristic of the 'royalty' as defined in para-103(i) of the judgement of Apex Court in the case of ***Mineral Area Development Authority (supra)*** is present.

41. The payment of 'royalty' in the instant case flows from the statutory agreement (a mining lease) between the lessor and the lessee. Though, in the instant case, it appears from the record that no agreement after issuance of LOI was executed, but for the reasons detailed below, we are of the view that LOI in the instant case has the ingredients of statutory agreement, and thus, second characteristic of the 'royalty' is in existence in the instant case. The third characteristic in the instant case is

also present as it represents return for grant of privileges (to the lessee) of removing or consuming the minerals. The fourth characteristic that generally 'royalty' is determined on the basis of quantity of minerals removed is also present, which is evident from the table in the LOI, extracted above.

42. Learned counsel for the petitioner has relied upon the judgement of the Apex Court in the case of ***Inderjeet Singh Sial and Another Vs. Karam Chand Thapar & Others, 1995 (6) SCC* 166** in support of his argument that 'royalty' is in fact a 'sale price' of the mineral, but the said judgement is distinguishable on facts and does not apply in the present case.

43. In the case of ***Inderjeet Singh Sial (supra)***, the Apex Court held that the meaning of 'royalty' in the facts of the said case cannot be read to imply an individual claim since it connotes the State's share in the mineral for conferment of mining lease. The facts of the case in which the Apex Court held that the 'royalty' implies sale was that the appellants were plaintiffs and were heirs of one Sardar Pishora Singh Sial. A mining lease by deed Exhibit D-2 dated 19.11.1938 was obtained by Sardar Pishora Singh Sial from the erstwhile Government of the Central Provinces for extraction of coal in 420.27 acres of land in Village Dighawani, District Chhindwara. He (Sardar Pishora Singh Sial) also obtained in the same village a prospecting licnece vide deed Exhibit D-3 dated 22.11.1938 to prospect coal in an area measuring 242.29 acres. He (Sardar Pishora Singh Sial) in anticipation of obtaining lease and the licence on 16.11.1938 entered into a contract with Karam Chand Thapar and Brothers Ltd. to assign his rights in the lease and prospecting licence when maturing. He, thereafter, sought and received permission from the Government on 07.03.1939 to transfer those two rights to Karam Chand Thapar and Brothers Ltd.

44. The Government secured its payment of due 'royalty' from Sardar Pishora Singh Sial uptill a particular date, and thereafter from the said Company. After obtaining permission, Sardar Pishora Singh Sial executed a sale deed in favour of Karam Chand Thapar and Brothers

Ltd. on 13.06.1939/30.06.1939. This first assignee later assigned its rights, interests and obligations in favour of the second assignee M/s. Rawanwara Collieries on 05.07.1940 and in the same pattern, the second assignee sold its rights, interests and obligations to the third assignee M/ s. Oriental Coal Company Ltd. The liability to pay the royalty to Sardar Pishora Singh Sial rested on three aforesaid assignees jointly as well as severally, and in discharge of that liability, the periodic payments had been made to Pishora Singh Sial (including his heirs) for about 20 years. Then suddenly the assignees cooled off and stopped making payments.

45. Thereafter, correspondence ensued between the parties, but to no avail. Ultimately, the heirs of Pishora Singh Sial instituted a suit against the three assignees for recovery of ‘royalty’. The defendants contested the suit denying their liability to pay ‘royalty’ on the ground that the deed postulated payment of royalty, descriptively well known to the mining world, which is representative of the State’s share in the mineral for such rights conferred, but not by a prerogative exercise by an individual.

46. It is further pleaded that the demand of any payment as ‘royalty’ by an individual was prohibited. The trial court decreed the suit in favour of the plaintiffs/appellants. The defendants/respondents preferred first appeal before the High Court which was allowed by the High Court, and against which plaintiffs/appellants preferred appeal. The Apex Court explained the word ‘royalty’ in the context of its payment to an individual and held that ‘royalty’ in the deed was used in a loose sense. Paragraph nos.12 & 13 of the judgement of ***Inderjeet Singh Sial (supra)*** are reproduced herein-below:-

> *“12. With respect we do not agree with any of those reasons. It may be true that the document Ex. D-5, written in English language, may have been prepared by a lawyer and was entered into between persons conversant with the vocabulary employed in mining leases. Yet these factors per se cannot conclude the matter that the word 'royalty' used in the document was meant to be royalty as such. If intelligence and responsibility is to be attributed to the draftsman and the contracting*

parties for using the word 'royalty' in that technical sense, then it cannot be imagined that they would have overlooked the status of the contracting parties inter se. We cannot thus assume that they were well versed in one aspect and not in the other. Strictly speaking, had the draftsman and the signatories to the deed meant 'royalty' as such, then they could not have omitted to identify who had the sovereign prerogative or the State's part to play. The word 'royalty' thus, in the deed was used in a loose sense so as to convey liability to make periodic payments to the assignor for the period during which the lease would subsist; payments dependent on the coal gotten and extracted in quantities or on despatch. We have therefore to construe document Ex. D-5 on its own terms and not barely on the label or description given to the stipulated payments. Conceivably this arrangement could well have been given a shape by using another word. The word 'royalty' was perhaps more handy for the authors to be employed for an arrangement like this, so as to ensure periodic payments. In no event could the parties be put to blame for using the word 'royalty' as if arrogating to themselves the royal or sovereign right of the State and then make redundant the rights and obligations created by the deed.

13. The commodity goes by its value; not by the wrapper in which it is packed. A man is known for his worth; not for the clothes he wears. Royal robes worn by a beggar would not make him a king. The document is weighed by its content, not the title. One needs to go to the value, not the glitter. All the same, we do not wish to minimise the importance of the right words to be used in documents. What we mean to express is that if the thought is clear, its translation in words, spoken or written, may, more often than not, tend to be faulty. More so in a language which is not the mother tongue. Those faulted words cannot bounce back to alter the thought. Thus in sum and substance when the contracting parties and the draftsman are assumed to have known that the word 'royalty' is meant to be employed to secure for the State something out of what the State conveys, their employment of that word for private ensuring was not intended to confer on the assignor the status of the sovereign or the State, and on that basis have the document voided. Therefore, we are of the view that the word 'royalty' was used in the deed misdescriptively and was really meant to cover an important item of the consideration due for future payments. Section 54 of the Transfer of Property Act clearly

postulates that sale is a transfer of ownership in exchange for a price paid or promised to be paid or part paid and part promised. In either situation title to the property would get transferred. This, in our view, demolishes the first two reasons."

47. The reading of two paragraphs extracted above clearly spells out in the aforesaid case that the Apex Court was interpreting the word 'royalty' employed in a deed between the two private individuals i.e. appellants/plaintiffs and the respondents/defendants, and held that it is to be assumed that the parties as well as draftsman were aware of the facts that the word 'royalty' is meant to be used to secure payment to the State for something which the State conveys, and the use of word 'royalty' in the draftsman deed was not employed so as to confer on the assignor, the status of a sovereign or the State. Even in the said judgement, the Apex Court has affirmed that 'royalty' undeniably was in assertion of the State's rights to the mineral gotten or to be gotten, and for the rights and privileges conferred in regard thereto.

48. Learned counsel for the petitioner could not demonstrate from the record that the word 'royalty' is used in any other sense than what has been described as term 'royalty' in the context of MMRD Act that royalty is employed to secure for State something out of what the State conveys. Therefore, the judgement of the Apex Court in the ***Indrajeet Singh Sial (supra)*** does not help to the petitioner.

49. So far as the judgement of the Apex Court in the case of ***D.K. Trivedi & Sons and Others Vs. State of Gujarat & Others, 1986 (Supp) SCC 20*** relied upon by the learned counsel for the petitioner that the royalty is a consideration or rent for the area leased by the State Government is concerned, the said judgement has been considered by the Apex Court in the case of ***Mineral Area Development Authority (supra),*** and thereafter, in para-103 of the said judgement, the Apex Court laid down essential characteristics of the royalty which the term 'royalty' has to satisfy in the context of MMRD Act.

50. This Court has already detailed above that the essential characteristics of royalty as defined in para-103 of the judgement of the

Mineral Area Development Authority (supra) are present in the present case.

51. It is also pertinent to reproduce relevant extract of paragraph no.39 of the judgement of Apex Court in the case of ***D.K. Trivedi (supra)***:-

> *"39.....Since the mining lease confers upon the lessee the right not merely to enjoy the property as under an ordinary lease but also to extract minerals from the land and to appropriate them for his own use or benefit, in addition to the usual rent for the area demised, the lessee is required to pay a certain amount in respect of the minerals extracted proportionate to the quantity so extracted. Such payment is called "royalty".*

52. Thus, even the extracted part of paragraph-39 reveals that any amount paid by the lessee in respect of minerals extracted proportionate to the quantity so extracted is called 'royalty'.

53. Thus, from the aforesaid discussion, the inevitable conclusion that can be arrived at in the instant case is that the term 'payment of royalty' has been used in the context of MMRD Act which signifies that it is a consideration for the Government parting with its mineral rights. As already detailed above, the term 'royalty' in the instant case possesses all the ingredients of 'royalty' as defined in paragraph no.103 of the judgement of the Apex Court in the case of ***Mineral Area Development Authority (supra),*** therefore, it is not used in reference to 'sale' as canvassed by the petitioner. Thus, the first contention of the petitioner is devoid of merit, and is hereby rejected.

54. The second limb of the argument of the learned counsel for the petitioner that Section 9-B of the MMRD Act would be attracted only when the operation was undertaken with the object of 'winning minerals' and such operations are taken after obtaining mining lease, and in the instant case, the necessary ingredients of Section 9-B of MMRD Act are lacking, therefore, the petitioner is not liable to contribute any amount towards DMF. To appreciate the said contention of the learned counsel for the petitioner, it would be apt to have a glance at Section 3(c)

defining '*mining lease*', Section 3(d) defining *'mining operations*'. Section 4 defines *'Prospecting or Mining Operations to be under licence or lease'* and Section 9-B defining *'District Mineral Foundation'* of the MMRD Act. For convenience, Sections 3(c), 3(d), 4 & 9-B of the MMRD Act are reproduced herein-below:-

"3. Definitions- In this Act, unless the context otherwise requires,-

(c) "mining lease" means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;

(d) "mining operations" means any operations undertaken for the purpose of winning any mineral;

4. ***Prospecting or mining operations to be under licence or lease****- (1). No Person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder";*

Provided that nothing in the sub-section shall affect any prospecting or mining operations undertaken in any area in accordance with the terms and conditions of a prospecting licence or mining lease granted before the commencement of this Act which is in force at such commencement:

[Provided further that nothing in this sub-section shall apply to any prospecting operations undertaken by the Geological Survey of India, the Indian Bureau of Mines, ["the Atomic Minerals Directorate for Explorations and Research"] of the Department of Atomic Energy of the Central Government, the Directorate of Mining and Geology of any State Government (by whatever name called), and the Mineral Exploration Corporation Limited, a Government company within the meaning of ["Clause (45) of Section 2 of the Companies Act, 2013 (18 of 2013) and any such entity that may be notified for this purpose by the Central Government"].

["(1-A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder."]

(2) No ["reconnaissance permit prospecting licence or mining lease] shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

[(3) Any State Government may, after prior consultation with the Central Government and in accordance with the rules made under Section 18, ["undertake reconnaissance, prospecting or mining operations with respect to any mineral specified in the First Schedule in any area within that State which is not already held under any reconnaissance permit, prospecting licence or mining lease."

9-B. District Mineral Foundation- (1) In any district affected by mining related operations, the State Government shall, by notification, establish a trust, as a non-profit body, to be called the District Mineral Foundation.

(2) The object of the District Mineral Foundation shall be to work for the interest and benefit of persons, and areas affected by mining related operations in such manner as may be prescribed by the State Government.

(3) The composition and functions of the District Mineral Foundation shall be such as may be prescribed by the State Government.

(4) The State Government while making rules under sub-sections (2) and (3) shall be guided by the provisions contained in Article 244 read with Fifth and Sixth Schedules to the Constitution relating to administration of the Scheduled Areas and Tribal Areas and the provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1966 (40 of 1996) and the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007).

(5) The holder of a mining lease or a prospecting licence-cum-mining lease granted on or after the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount which is equivalent to such percentage of the royalty paid in terms of the Second Schedule, not exceeding one-third of such royalty, as may be prescribed by the Central Government.

(6) The holder of a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, shall, in addition to the royalty, pay to the District Mineral Foundation of the district in which the mining operations are carried on, an amount not exceeding the royalty paid in terms of the Second Schedule in such manner and subject to the

categorisation of the mining leases and the amounts payable by the various categories of lease holders, as may be prescribed by the Central Government."

55. According to the petitioner, operation/activity undertaken by the petitioner was not for the purpose of 'winning any mineral' and does not fall within the term 'mining operations' defined in Section 3 (d) of the MMRD Act, and as no lease was granted for the purpose of undertaking mining operations, therefore, no 'mining lease' is in existence in the present case as defined in Section 3(c), therefore, Section 9-B (5) of the MMRD Act is not attracted as it envisages that liability to pay contribution towards DMF is only upon a person who is holder of a mining lease or a prospecting licence-cum-mining lease.

56. The question that arises for consideration in the instant case is whether the activity/operation entrusted to the petitioner for transporting limestone comes within the purview of 'mining operation' or not, and if it is a 'mining operation' whether such operation was undertaken for the purpose of 'winning any mineral' and whether there exists a mining lease for the purpose of undertaking 'mining operations' as defined in Section 3(c) of the MMRD Act requires consideration by this Court. If the answer to the aforesaid question is in affirmative, the petitioner is liable to pay contribution towards DMF, and if it is in negative, the petitioner cannot be saddled with the liability to pay contribution towards DMF.

57. In order to appreciate as to whether the operation undertaken by the petitioner is with the object of 'winning any mineral' and falls under the 'mining operation', it would be apt to refer to few judgements of the Apex Court wherein the Apex Court has construed and interpreted the term 'mining operations'.

58. The Apex Court in paragraph-13 of the judgement in the case of ***Bhagwan Dass vs. State of U.P. & Others, AIR 1976 SC 1393*** has held as under:-

"13. Only one more argument made on behalf of the appellant requires to be noticed. It was urged that the sand and gravel are deposited on the surface of the land and not under the surface of the soil and therefore they cannot be called minerals and equally so, any operation by which they are collected or gathered cannot properly be called a mining operation. It is in the first place wrong to assume that mines and minerals must always be subsoil and that there can be no minerals on the surface of the earth. Such an assumption is contrary to informed experience. In any case, the definition of mining operations and minor minerals in Section 3(d) and (e) of the Act of 1957 and Rule 2(5) and (7) of the Rules of 1963 shows that minerals need not be subterranean and that mining operations cover every operation undertaken for the purpose of "winning" any minor mineral. "Winning" does not imply a hazardous or perilous activity. The word simply means "extracting a mineral" and is used generally to indicate any activity by which a mineral is secured. "Extracting", in turn, means drawing out or obtaining. A tooth is 'extracted' as much as is fruit juice and as much as a mineral. Only, that the effort varies from tooth to tooth, from fruit to fruit and from mineral to mineral."

59. The Apex Court in the case of ***Sri Tarkeshwar Sio Thakur Jiu Vs. Dar Dass Dey & Co. and Others, 1979 (3) SCC 106*** held that 'mining operations' as defined in Section 3(d) of MMRD Act can be carried out underground as well as on the surface of the earth. Paragraph nos.13 to 16 of the said judgement are being reproduced herein-below:-

"13. Section 2(j) of the Mines Act, 1952, defines 'Mines' to mean any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on and includes all open cast working....

"Minor Minerals" as defined in clause (e) of Section 3 of the Mines and Minerals (Regulation and Development) Act, (67 of 1957) include "ordinary sand". Clause (c) of the same section defines "mining lease" as a "lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose". Clause (d) of the same section defines "mining operations" to mean "any operations undertaken for the purpose of winning any minerals".

14. Before the High Court, it was common ground between the parties that the land in dispute has a sub-soil deposit of sand and the rights granted to the respondent, under the document (Ext. 1), styled as a 'licence', were "to raise" and "take" away that deposit of sand. Before us, an attempt was made to deviate from that stand by contending that the deposits of sand are on the surface in the shape of sand-dunes and for removing the same no excavation or mining operations are necessary.

15. The contention must be repelled. The definitions of "mining operations" and "mine", noticed above, are very wide. The expression "winning of mineral" in the definition of 'mining operations' is spacious enough to comprehend every activity by which the mineral is extracted or obtained from the earth irrespective of whether such activity is carried out on the surface or in the bowels of the earth. As pointed out by this Court in Bhagwan Dass v. State of Uttar Pradesh, it is wrong to assume that mines and minerals must always be sub-soil and that there can be no minerals on the surface of the earth.

16. It is true that in the definition of "Mine", the term "excavation", in the ordinary dictionary sense, means "hole", "hollow" or "cavity made by digging out". But the word "any" prefixed to "excavation" in the context of the phrase "for the purpose of searching for or obtaining mineral" gives it a much more extensive connotation, so that every "excavation", be it in the shape of an open-cast cavity or a subterranean tunnelling, will fall within the definition of 'Mine'. Similarly, it is not a requirement of the definition of 'mining operation' that the activity for winning the mineral must necessarily be an underground activity. The essence of 'mining operations' is that it must be an activity for winning a mineral, whether on the surface or beneath the surface of earth. Thus considered, the land in dispute having large deposits of sand, which is a minor mineral and was admittedly being excavated and removed by the defendant, was at the date of vesting "comprised in or appertained to a mine" within the meaning of Section 28."

60. In the case of ***Mineral* Area Development Authority (supra),** the Apex Court while explaining the term 'mining lease' also explained the expression 'mining operations' by placing reliance upon the judgement of the Apex Court in the case of ***Gujarat Pottery Works Vs. B.P. Sood, Controller of Mining Leases for India, 1967 (1) SCR 695*** & ***Bhagwan Dass (supra).*** Paragraph nos.92 & 93 of the said judgement are being reproduced herein-below:-

"92. A "mining lease" is defined under the MMDR Act to mean a lease granted for the purpose of undertaking mining operations and includes a sub-lease granted for such purpose. The expression "mining

operations" has been defined to mean any operations undertaken for the purpose of winning any mineral. The expression "winning" has been explained by this Court to mean getting or extracting minerals from the mines. In Tarkeshwar Sio Thakur Jiu v. Dar Dass Dey & Co. R.S. Sarkaria, J. observed that the expression "mining operations" is expansive, so as to comprehend every activity by which the mineral is extracted or obtained from the earth irrespective of whether such activity is carried out on the surface or in the bowels of the earth. Section 3(fa) defines "production" or any derivative of the word "production" to mean the winning or raising of mineral within the leased area for the purpose, of processing or dispatch. The expression "dispatch" has been defined to mean the removal of minerals or mineral products from the leased area and to include the consumption of minerals and mineral products within such area. It is worth noting that royalty is payable under Section 9 on the removal or consumption of minerals by the lessee in the leased area. Thus, essentially royalty is payable on the dispatch of minerals from the leased area.

93. This segment indicates that under a lease deed for mining operations, the owner transfers the interest in the minerals to the lessee in lieu of the payment of rent, which usually takes the form of royalty. To answer whether this payment is akin to a tax, we must understand the nature of a mining lease under the MMDR Act."

61. From the reading of the aforesaid judgement, it can safely be concluded that the 'mining operations' as defined in Section 3(d) of the MMRD Act is comprehensive, so as to embrace every activity by which mineral is quarried or obtained from the earth irrespective of whether such activity is carried out on the surface or deep inside the earth.

62. The word 'winning' as interpreted by the Apex Court in Section 3(d) of MMRD Act means extracting or obtaining a mineral from mines. In other words, the expression 'winning' means every activity undertaken for the purpose of getting or excavating minerals from the mines. The word 'winning' in the context of Section 3(d) does not mean that it should be only hazardous or perilous activity rather it encompasses every activity employed for extracting or securing mineral. In the case in hand, the petitioner does not dispute the fact that limestone

is a mineral and E-Tender Notice/Advertisement was issued for obtaining the tender for clearing limestone on the site.

63. Thus, the clearance of the limestone from the site in the instant case would fall within the 'mining operation' in the light of the aforesaid judgements of the Apex Court defining that the mining operations includes every activity carried out for the purpose of extracting or obtaining mineral either on the surface of the earth or beneath the earth.

64. From the aforesaid discussion, it is evident that the petitioner had undertaken the operation with the object of 'winning mineral' as the expression 'winning' has been explained by the Court to mean getting or extracting minerals from the mines. Thus, it is established that the operation undertaken by the petitioner was with the object of 'winning mineral'.

65. The further question that arises in the present case is that if there was no mining lease in favour of the petitioner, whether Section 9-B of the MMRD Act would attract.

66. The record reflects that after issuance of LOI, no separate lease deed was executed. It is true that no separate lease deed was executed after issuance of mining lease, but the Courts have explained that in certain cases LOI can be treated as a contract between the parties. In the instant case, whether LOI meets the requirement of a valid contract is also ancillary question, which needs to be considered by this Court.

67. In the case of ***Dresser Rand S.A. Vs. Bindal Agro Chem Ltd. & Another, 2006 (1) SCC 751***, the Apex Court held that LOI merely indicates a party's intention to enter into a contract with the other party in future and does not intend to bind either party to enter into a contract. However, the Court further held that Letter of Intent may be construed as Letter of Acceptance, if such intention is evident from its term. Paragraph nos.39 & 40 of the said judgement being reproduced herein below:-

> *"39. It is now well settled that a letter of intent merely indicates a party's intention to enter into a contract with the other party in future. A letter of intent is not intended to bind either party ultimately to enter into any*

contract. This Court while considering the nature of a letter of intent, observed thus in Rajasthan Coop. Dairy Federation Ltd. v. Maha Laxmi Mingrate Marketing Service (P) Ltd.: (SCC p. 408, para 7)

"The letter of intent merely expressed an intention to enter into a contract... There was no binding legal relationship between the appellant and Respondent 1 at this stage and the appellant was entitled to look at the totality of circumstances in deciding whether to enter into a binding contract with Respondent 1 or not."

40. It is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that the detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a letter of intent, it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether it is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter. Chitty on Contracts (para 2.115 in Vol.1, 28th Edn.) observes that where parties to a transaction exchanged letters of intent, the terms of such letters may, of course, negative contractual intention; but, on the other hand, where the language does not negative contractual intention, it is open to the courts to hold that the parties are bound by the document; and the courts will, in particular, be inclined to do so where the parties have acted on the document for a long period of time or have expended considerable sums of money in reliance on it. Be that as it may."

68. In the case of ***South Eastern Coalfields Limited & Others Vs. S. Kumar's Associates AKM (JV) 2021 (9) SCC 166,*** the Apex Court held that in a given case, it is possible to construe letter of intent as a binding contract if its term expresses clear and unambiguous intention of the party to bind by it. Paragraph no.22 of the said judgement is being reproduced herein below:-

"22. We would like to state the issue whether a concluded contract had been arrived at inter se the parties is in turn dependent on the terms and conditions of the NIT, the LOI and the conduct of the parties. The judicial views before us leave little doubt over the proposition that an Lol merely indicates a party's intention to enter into a contract with the other party in future. No binding relationship between the parties at this stage emerges and the totality of the circumstances have to be considered in each case. It is no doubt possible to construe a letter of intent as a binding contract if such an intention is evident from its terms.

> *But then the intention to do so must be clear and unambiguous as it takes a deviation from how normally a letter of intent has to be understood. This Court did consider in Dresser Rand S.A. case that there are cases where a detailed contract is drawn up later on account of anxiety to start work on an urgent basis. In that case it was clearly stated that the contract will come into force upon receipt of letter by the supplier, and yet on an holistic analysis-it was held that the Lol could not be interpreted as a work order."*

69. Learned Chief Standing Counsel-II submits that according to Mulla *"In construing whether or not a particular agreement does or does not amount to a contract, the court would look for the intention of the parties, the nature of the transaction, the language employed in the informal agreement and other relevant circumstances. None of these is conclusive in itself... The fact that the parties contemplate that the letters or an informal agreement would be superseded by a more formal one, does not a prevent it from taking effect as a contract. If the letter of intent is acted upon, especially for a length of time, the court is likely to hold the parties bound by the contract." (See Mulla, Indian Contract and Specific Relief Acts, 13th Edn. at pp. 317-18.)*

70. At this stage, it is relevant to consider Section 4(1) of the MMRD Act which categorically prescribes that reconnaissance, prospecting or mining operations in any area could be undertaken in accordance with the terms and conditions of reconnaissance, permit or of a prospecting licence or as the case may be of a mining lease granted under this act and the rules made thereunder.

71. The case of the petitioner does not fall in any of the proviso given under Section 4(1) of the MMRD Act.

72. Section 4 categorically puts an embargo to carry out any mining operation unless the condition prescribed under Section 4(1) are satisfied which in other word means that a person can undertake mining operation with terms and conditions of reconnaissance, permit or of a prospecting licence or as the case may be of a mining lease granted under this Act and rules made thereunder.

73. Section 4(1-A) also bars a person to transport or store or cause to be transported or stored any mineral otherwise than in accordance with provisions of this act and rules made thereunder.

74. In the instant case, to find out whether LOI meets the essential requirement of contract, it would be apt to reproduce the letter of intent dated 04.05.2018:-

"उ०प्र० शासन के पत्र संख्या –287/86–2018–164(सा०)/2017 दिनांक 13.02.2018 में दिये गये निर्देश के अनुपालन में जनपद–सोनभद्र, तहसील रावर्ट्सगंज स्थित टकहिया पहाड़ी में ओबरा– "सी " (2X660 मेगावाट) तापीय विस्तार परियोजना क्षेत्र के समतलीकरण कार्य के दौरान ब्लास्टिंग/खुदाई से निकले मुख्य खनिज लाइम स्टोन को 03 खण्डों में विभाजित करते हुए उसकी निकासी हेतु इस कार्यालय के पत्र संख्या 2955/ खनिज/ई–निविदा/विज्ञप्ति/2018 दिनांक 24.01.2018 द्वारा eProcurement Portal https://etender.up.nic.in पर ऑनलाइन ई–निविदा आमंत्रित किया गया था। ई–निविदा की समाप्ति के उपरान्त निम्नलिखित खण्ड में भण्डारित लाइम स्टोन के लिए आप द्वारा ई–निविदा में सर्वोच्च बोली दी गयी।

भण्डारित मुख्य खनिज लाइम स्टोन का विवरण:–

क्र सं०	*स्थल का विवरण, जहां पत्थर भण्डारित है*	*भण्डारित खनिज की मात्रा (घ०मी० में)*	*भण्डारित खनिज की रायल्टी दर (प्रति घन मी०)*	*निविदादाता द्वारा दी गयी सर्वोच्च बोली (रू० प्रति घन मी०)*	*निविदादाता द्वारा दी गयी सर्वोच्च बोली के सापेक्ष भण्डारित खनिज की कुल देय रायल्टी (रू० में)*	*निविदादाता द्वारा जमा की गयी अनेष्ट मनी (रू० में)*	*अनेष्ट मनी को समायोजित करने के पश्चात निविदादाता द्वारा रायल्टी के मद में जमा की जाने वाली कुल धनराशि (रू०में)*
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*
1.	*खण्ड–3(क) प्रस्तावित स्वीच यार्ड के पास जी०पी०एस० रीडिंग 24⁰*	*1,50,760*	*275.00*	*809.80*	*12,20,85,448.00*	*1,03,64,750.00*	*11,17,20,698.00*

	27′ 24.5″, 82^0 58′ 41.8″ खण्ड–3(ख) प्रस्तावित स्वीच यार्ड के पास जी०पी०एस० रीडिंग 24^0 27′ 26.4″, 82^0 58′ 40.9″ खण्ड–3(ग) प्रस्तावित स्वीच यार्ड से पहले पहाड़ी की तरफ जी०पी०एस रीडिंग 24^0 27′ 23″, 82^0 58′ 45.9″						

उक्त प्राप्त सर्वोच्च बोली के अनुमोदन हेतु इस कार्यालय के पत्रांक–41/खनिज/2018 दिनांक 12.04.2018 द्वारा आख्या उ०प्र० शासन को प्रेषित की गयी थी, जिसके क्रम में शासन के पत्र संख्या –900/86–2018–164(सामान्य)/2017 दिनांक 02.05.2018 द्वारा शासन का अनुमोदन प्राप्त हो गया है। ई–टेण्डर पोर्टल पर आप द्वारा अपलोड किये गये अभिलेख प्रथम दृष्टया सही पाये गये हैं। तद्नुसार निम्नलिखित शर्तों के अधीन उपरोक्त क्षेत्र में भण्डारित लाइम स्टोन को हटाने हेतु लेटर आफ इन्टेण्ट जारी करने की सहमति प्रदान की जाती है:–

शर्तें:–

1. भण्डारित मुख्य खनिज लाइम स्टोन को निकासी हेतु 04 माह अथवा खनिज की मात्रा, जो पहले समाप्त हो, तक के लिए वैध मानी जायेगी।

2. सर्वोच्च/सफल निविदादाता, यदि सर्वोच्च बोली की धनराशि को जमा करने में असफल होता है तो उसके द्वारा जमा की गयी अर्नेष्ट मनी की धनराशि को राज्य सरकार के पक्ष में जब्त कर ली जायेगी और उसके द्वारा इस सम्बन्ध में कोई शिकायत अथवा प्रत्यावेदन विचार योग्य नहीं होगा।

3. निविदादाता द्वारा राज्य सरकार अथवा केन्द्र सरकार द्वारा निर्धारित कर एवं शुल्क यथा सम्पूर्ण रायल्टी रू० 12,20,85,448.00 (बारह करोड़ बीस लाख पचासी हजार चार सौ

अड़तालिस रूपये मात्र) का 2.04 प्रतिशत आयकर (टी०डी०एस०) रू० 24,90,543.00 (चौबीस लाख नब्बे हजार पांच सौ तैतालिस रूपये मात्र), सम्पूर्ण रायल्टी के सापेक्ष नियमानुसार देय डी०एफ०एफ० रू० 4,06,95,150.00 (चार करोड़ छः लाख पन्चानबे हजार एक सौ पचास रूपये मात्र) की धनराशि, सी०एस०आर०, नियमानुसार स्टाम्प पेपर तथा शक्तिनगर विशेष क्षेत्र प्राधिकरण, सोनभद्र (साडा) सम्बन्धित उपकर रू० 7,53,800.00 (सात लाख तिरपन हजार आठ सौ रूपये मात्र) भी जमा करना अनिवार्य होगा।

4. निविदादाता लाइम स्टोन के परिवहन हेतु प्रत्येक खनिज वाहन को वैध परिवहन प्रपत्र विवरण सहित जारी करेगा। उक्त का अनुपालन न करने की दशा में नियमानुसार शास्ति का भागी होगा।

5. निविदादाता ऐसी रीति से खनिज का परिवहन करेगा, जिसे कोई सड़क, सार्वजनिक मार्ग, भवन, भू–गृहादि, सार्वजनिक भू–स्थल या सार्वजनिक सम्पत्ति पर बाधा न पड़े, न उसे क्षति पहुँचे।

6. निविदादाता परिवहन किये गये खनिज का लेखा–जोखा रखेगा और एतदर्थ प्रतिनियुक्ति प्राधिकारी को ऐसे लेखों का निरीक्षण करने की अनुमति देगा।

7. निविदादाता को समय–समय पर शासन/खनन निदेशालय/जिला प्रशासन द्वारा जो भी निर्देश/आदेश नियमानुसार दिये जायेंगे, उसका अनुपालन किया जाना अनिवार्य होगा।

8. मा० न्यायालयों द्वारा पारित आदेशों का अनुपालन करना अनिवार्य होगा।

अतः आपको सूचित किया जाता है कि पत्र प्राप्ति के दो कार्य दिवस के अन्दर उपरोक्त आवश्यक औपचारिकताएं पूर्ण करते हुए पत्थर नीलामी की सकल धनराशि रू० 12,20,85,448.00 (बारह करोड़ बीस लाख पचासी हजार चार सौ अड़तालिस रूपये मात्र) में से जमा अर्नेष्ट मनी रू० 1,03,64,750.00 (एक करोड़ तीन लाख चौंसठ हजार सात सौ पचास रूपये मात्र) को समायोजित करते हुए अवशेष धनराशि रू० 11,17,20,698.00 (ग्यारह करोड़ सत्रह लाख बीस हजार छः सौ अन्ठानबे रूपये मात्र) को खनिज लेखाशीर्षक में जमा कर, जमा चालान की मूल प्रति अधोहस्ताक्षरी के कार्यालय में उपलब्ध कराना सुनिश्चित करें।"

75. Perusal of letter of intent discloses that same had been issued permitting the petitioner to clear limestone subject to the conditions embodied in the said letter.

76. The condition no.2 categorically states that in case, the highest bidder could not deposit the bid amount, the security of such bidder shall be forfeited.

77. The condition no.3 stipulates that tenderer has to deposit prescribed tax and fees as 2.6% of the royalty amounting to Rs.24,90,453/- as TDS and DMF amounting to Rs.4,06,95,150/- with reference to royalty.

78. The condition no.4 prescribes the tenderer to obtain valid transport certificate from the competent authority, which the petitioner obtained by letter dated 21.05.2018 of the District Magistrate, Sonbhadra. The said letter has also been issued embodying the condition no.6 asking the petitioner to deposit TCS and DMF and other amount within a period of one week, and in case of non-compliance of said condition, the royalty deposited by the petitioner shall be forfeited. The condition no.6 is reproduced herein below:-

> *"6. नियमानुसार टी०सी०एस० एवं डी०एम०एफ० व अन्य धनराशि एक सप्ताह के अन्दर जमा करना अनिवार्य होगा, अन्यथा की स्थिति में जमा रायल्टी को जब्त करते हुए स्वीकृति आदेश को निरस्त कर दिया जायेगा।"*

79. The aforesaid letter dated 21.05.2018 discloses that the petitioner has deposited Rs.12,20,85,448/- towards royalty.

80. In the aforesaid facts, the Court proceeds to consider whether Letter of Intent issued to the petitioner is a contract or not.

81. In the instant case, the petitioner by submitting E-Tender has offered to undertake the clearance of limestone which offer had been accepted by the State-respondents by issuing Letter of Intent on the conditions stipulated in the Letter of Intent. If Letter of Intent is read in the light of Section 4(1) and Section 4(1-A) of the MMRD Act which bars a person from undertaking any mining operation except under and in accordance with the terms and conditions of mining lease, which means that to undertake any mining operation or to transport any mineral, there has to be a mining lease granted under the MMRD Act and rules made thereunder.

82. So without there being any mining lease complying with the requirements of MMRD Act and rules framed thereunder, a person cannot undertake any mining operation or transportation of any mineral.

83. It is manifest from the record that letter of intent clearly recites that offer of the petitioner is being accepted on the terms and conditions stipulated in the said letter. The petitioner, thereafter, acted upon the letter of intent by depositing the amount of royalty and other amounts except the DMF amount and had also obtained the letter of permission dated 21.05.2018 from District Magistrate, Sonbhadra to transport the minerals in compliance of the condition no.4 embodied in the LOI.

84. The record does not reflect that at the time of submitting E-Tender or accepting letter of intent or accepting the letter dated 21.05.2018 issued by the District Magistrate, Sonbhadra for transportation of the mineral, the petitioner had ever objected or protested the conditions stipulated in the terms and conditions of the E-Tender and LOI that petitioner is to deposit DMF amount of Rs.4,06,95,150/-. The record also does not reflect that the petitioner ever protested the conditions stipulated in the letter of permission dated 04.05.2018 that in case the petitioner fails to deposit TCS and DMF and other amount, the royalty deposited by the petitioner shall be forfeited.

85. The aforesaid fact clearly demonstrate that the petitioner had voluntarily accepted and acted upon the terms and conditions of the LOI dated 04.05.2018, and terms and conditions stipulated in the letter dated 21.05.2018 permitting the petitioner to transport the vehicle.

86. If the law postulated by the Apex Court in the aforesaid cases that LOI in certain cases can be treated as a contract is applied in the facts of the present case, the irresistible conclusion in the instant case is that by accepting the terms and conditions of the Letter of Acceptance voluntarily and also the letter dated 21.05.2018 granting permission to the petitioner to transport the mineral, and acting upon the LOI and letter dated 21.05.2018, the LOI can be construed as binding contract between

the petitioner and the State-respondents for clearing the limestone from the site.

87. Further in view of the embargo created by Section 4 of the MMRD Act that a person cannot undertake mining operation except in accordance with terms and conditions of mining lease granted under this Act and rules made thereunder, and no person shall transport any mineral otherwise than in accordance with the provisions of the Act and rules made thereunder leaves in no manner of doubt that LOI may not be strictly termed as 'lease deed' as contemplated under Section 105 of the Transfer of Property Act, 1882, but it is a 'lease deed' in reference to Section 4(1) of the MMRD Act, and therefore, petitioner cannot escape his liability to pay DMF contribution under Section 9-B of the MMRD Act.

88. The Apex Court in the case of ***State of Meghalaya Vs. All Dimasa Students Union, Dima-Hasao District Committee and Others, 2019 (8) SCC 177*** has considered the nature of mining lease. Paragraph nos.107 to 112 are being reproduced herein below:-

> *"107. Another limb of the submission of the appellant needs to be noticed here. Shri Naphade submits that there is no concept of owner of a land granting lease to himself. He submits that concept of lease is well known and well-recognised concept as contained in Section 105 of the Transfer of Property Act. Section 105 of the Transfer of Property Act is as follows:*
>
> > *"105. Lease defined.- A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.*
> >
> > *Lessor, lessee, premium and rent defined. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent."*
>
> *108. Halsbury's Laws of England, 4th Edn., Para 321 defines "nature of mining lease" in the following manner:*

"321. Nature of mining lease.-A lease may be granted of land or any part of land, and since minerals are a part of the land it follows that a lease can be granted of the surface of the land and the minerals below, or of the surface alone, or of the minerals alone. It has been said that a contract for the working and getting of minerals, although for convenience called a mining lease, is not in reality a lease at all in the sense in which one speaks of an agricultural lease, and that such a contract, properly considered, is really a sale of a portion of the land at a price payable by installments, that is, by way of rent or royalty, spread over a number of years."

109. This Court had occasion to consider the concept of mining lease under the 1957 Act in Tarkeshwar Sio Thakur Jiu v. Dar Dass Dey & Co. This Court held that term "lease" occurring in Section 3(c) of Act 67 of 1957 does not appear to have been used in the narrow technical sense in which it is defined in Section 105 of the Transfer of Property Act but it has all the characteristics of a lease as defined in the Transfer of Property Act. (emphasis supplied) In para 31, the following was laid down: (SCC p. 115)

"31. It is important to bear in mind that the term "lease" occurring in the definition of "mining lease" given in Section 3(c) of Act 67 of 1957 does not appear to have been used in the narrow technical sense in which it is defined in Section 105 of the Transfer of Property Act. But, as rightly pointed out by a Bench of the Calcutta High Court in Falakrishna Pal v. Jagannath Marwari, a settlement of the character of a mining lease is everywhere in India regarded as "lease". A mining lease, therefore, may not meticulously and strictly satisfy in all cases, all the characteristics of a "lease" as defined in the Transfer of Property Act. Nevertheless, in the legally accepted sense, it has always been regarded as a lease in this country."

110. This Court proceeded further to consider Section 105 of the Transfer of Property Act and opined the following in para 37: (Tarkeshwar Sio case, SCC p. 116)

"37. A right to carry on mining operations in land to extract a specified mineral and to remove and appropriate that mineral, is a "right to enjoy immovable property" within the meaning of Section 105; more so, when as in the instant case- it is coupled with a right to be in its exclusive khas possession for a specified period. The "right to enjoy immovable property" spoken of in Section 105, means the right to enjoy the property in the manner in which that property can be enjoyed. If the subject-matter of the lease is mineral land or a sand-mine, as in the case before us, it can only be enjoyed and occupied by the lessee by working it, as indicated in

Section 108, Transfer of Property Act, which regulates the rights and liabilities of lessors and lessees of immovable property."

111. This Court further following Nageshwar Bux Roy v. Bengal Coal Co. Ltd., in State of Karnataka v. Subhash Rukmayya Guttedar laid down the following in para 6: (SCC pp. 294)

"6. ... The question, therefore, is whether the grant of the right to extract the minor mineral from government quarry is a lease or a licence and whether the contractor is liable to pay the royalty in respect of minor mineral extracted from the government quarry. Section 105 of the Transfer of Property Act defines a lease of immovable property as a transfer of a right to enjoy such property made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The normal connotation of the term lease is the preservation of the demised estate to be in occupation and enjoyment thereof for a specified period or in perpetuities for consideration; the corpus by user thereof does not disappear and at the expiry of the term or on termination the same is handed over to the lessor subject to the terms of the contract, express or implied. A right to carry on mining operations in the land on surface or subsoil is to extract the specified quantity of the minerals found therein, to remove and appropriate that mineral. Section 9 of the Mines and Minerals (Development & Regulation) Act, 1957 affords the guidance in this behalf. It says that the holder of a mining lease or agent, etc is entitled to remove or consume the mineral. It would mean destruction of the estate leased out and appropriation thereof on payment of consideration i.e. royalty. Therefore, it is a right to enjoy immovable property within the meaning of Section 105 more so when, as in the instant case, it is coupled with a right to be in occupation or enter into possession for a specified period. Section 3(d) of the Act defines "mining operations" to mean any operation undertaken for the purpose of winning any minerals. It is true that no right, title or interest has been created in the contractor over the mining area. But he has been permitted to remove and use the minor minerals in the execution of the works as its (sic his) right to enjoy immovable property spoken of in Section 105 which means the right to enjoy the property in the manner in which that property can be enjoyed. In Nageshwar Bux Roy v. Bengal Coal Co. Ltd. Lord Macmillan speaking for the Board held that: (SCC OnLine PC)

'In considering the character and effect of acts of possession in the case of a mineral field, it is necessary to bear in mind the

nature of the subject and the possession of which it is susceptible. Owing to the inaccessibility of minerals in the earth, it is not possible to take actual physical possession at once of a whole mineral field: it can be occupied only by extracting the minerals and until the whole minerals are exhausted the physical occupation must necessarily be partial.' "

112. The words "mining lease" have been given specific meaning under the 1957 Act. It is well-settled principle of interpretation that the provisions of an Act including definition of a term are to be interpreted in a manner which may advance the object of the legislation. The essential characteristic of mining lease is that it is granted for the purpose of undertaking mining operation and mining operation means any operation undertaken for the purpose of winning the mineral. Applying the aforesaid definition in the Mineral Concession Rules, 1960 under Chapter V it cannot be said that no mining lease is contemplated with respect to land where mineral vests exclusively in a private person."

89. In paragraph no.112 of the aforesaid judgement, the Apex Court concluded that essential characteristics of 'mining lease' is that it is granted for the purpose of undertaking the mining operation and such operation has been undertaken for the purpose of 'winning mineral'.

90. In the instant case, we have held above that the activities which the petitioner had carried out in the instant case falls within the purview of mining operation, and said operation was undertaken for the purpose of 'winning mineral'. Therefore, the twin characteristics postulated in the aforesaid judgement of a mining lease is present in the instant case as the letter of intent which had been held to be a contract was issued for the purpose of undertaking the mining operation and such mining operation was undertaken for the purpose of 'winning mineral'.

91. In the present case, the lease granted to the petitioner was not in breach of any provision of MMDR Act, therefore, the judgement of the Apex Court in the case of ***Sandur Manganese and Iron Ores Ltd. Vs. State of Karnataka and Others, 2010 (13) SCC 1*** also does not help to the petitioner.

92. The present case may be appreciated from another point of view, whether once the petitioner has submitted E-tender for the purpose of

winning mineral to undertake mining operation, the terms and conditions under which the said tender was issued specifically provides that tenderer shall be liable to pay DMF contribution, and after the offer given by the petitioner in the form of submitting E-tender, and same was accepted by the respondents by issuing LOI embodying the specific condition that petitioner shall have to pay DMF contribution and after accepting the terms and conditions of the LOI and acting upon the LOI, can the petitioner wriggle out the contract and deny his liability to pay any contribution towards DMF.

93. To appreciate the said question, it would be apt to have a glance at a few judgements of the Apex Court in this regard:-

94. Paragraph no.21 of the judgement of the Apex Court in the case of ***Har Shankar and Others etc. Vs. The Deputy Excise and Taxation Commissioner and Others, AIR 1975 SC 1121*** is reproduced herein below:-

> *"21. On the preliminary objection it was finally urged by the appellants that the objection was misconceived because there was in fact, no contract between the parties and therefore they were not attempting to enforce any contractual rights or to wriggle out of contractual obligations. The short answer to this contention is that the bids given by the appellants constitute offers and upon their acceptance by the Government a binding agreement came into existence between the parties. The conditions of auction become the terms of the contract and it is on those terms that licences are granted to the successful bidders in Form L. 14-A of the Rules. As stated in Cheshire and Fifoot's Law of Contract (Eighth Edn., 1972; p. 24).*
>
> > *"In order to determine whether, in any given case, it is reasonable to infer the existence of an agreement, it has long been usual to employ the language of offer and acceptance. In other words, the court examines all the circumstances to see if the one party may be assumed to have made a firm "offer" and if the other may likewise be taken to have "accepted" that offer. These complementary ideas present a convenient method of analysing a situation, provided that they are not applied too literally and that facts are not sacrificed to phrases."*
> >
> > *Analysing the situation here, a concluded contract must be held to have come into existence between the parties. The appellants have displayed ingenuity in their search for invalidating circumstances but a writ petition is not an appropriate remedy for impeaching contractual obligations."*

95. It would also be apt to reproduce para 35 of the judgement of the Apex Court in the case of ***State of Orissa and Others Vs. Narain Prasad and Others, AIR 1997 SC 1493:-***

> "*35. Lastly, we may also invoke the holding in Har Shankar (AIR 1975 SC 1121) and Jageram (AIR 1980 SC 2018) that the writ petitioners, having entered into agreements voluntarily, containing the conditions aforesaid and having done the business under the licences obtained by them, cannot be allowed to either wriggle out of the agreements nor can they be allowed to challenge the validity of the Rules which constitute the terms of the contract. The High Court should not have exercised its extraordinary discretionary jurisdiction under Article 226 of the Constitution in aid of such licencees."*

96. In the case of ***Venkataraman Krishnamurty and Another Vs. Lodha Crown Buildmart Private Limited,*** **2024 (4) SCC 230**, the Apex Court has laid down the principles based on which, the terms and conditions of the contract should be interpreted. Paragraph nos.21 and 22 of the said judgement are being reproduced herein below:-

> *"21. In this regard, we may refer to the Constitution Bench decision in General Assurance Society Ltd. v. Chandumull Jain, wherein it was observed that, in interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves. Thereafter, in Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corporation Ltd., this Court reiterated that a contract, being a creature of an agreement between two or more parties, is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however reasonable, if the parties have not made it themselves.*
>
> *22. More recently, in Shree Ambica Medical Stores v. Surat People's Coop. Bank Ltd., it was observed that, through its interpretative process, the court cannot rewrite or create a new contract between the parties and has to simply apply the terms and conditions of the agreement as agreed between the parties. Again, in GMR Warora Energy Ltd. v. CERC, it was observed that courts cannot substitute their own view of the presumed understanding of commercial terms by the parties, if the terms are explicitly expressed. It was held that the explicit terms of a contract are always the final word with regard to the intention of the parties."*

97. The petitioner since the initiation of process of E-Tender inviting application for clearing limestone knew that the successful bidder is liable to pay DMF contribution under the terms and conditions of tender, and knowing well this term and condition of tender participated in E-Tender. The petitioner being successful bidder accepted the LOI embodying the condition of payment of DMF contribution and acted upon it. The petitioner is bound by the terms and conditions stipulated in LOI and letter dated 21.05.2018 granting permission to petitioner to transfer mineral. Now, he cannot turn around and deny his liability to pay DMF contribution on the pretext that since he is not a holder of mining lease, therefore, he does not fall within the purview of Section 9-B (5) of the MMRD Act, hence, he cannot be obligated to pay DMF contribution.

98. The petitioner in view of the law postulated in the aforesaid judgement is bound by the terms and conditions of the LOI and after accepting and acting upon the terms and conditions of the LOI cannot deny the payment of contribution towards DMF on the ground that Section 9-B of the MMRD Act is not attracted. The petitioner cannot challenge the incorporation of aforesaid condition in E-Tender notice and LOI after voluntary participating in E-Tender process and after accepting LOI and acting upon it in view of the judgement of the Apex Court in the case of ***State of Orissa (supra)***.

99. The conduct of the petitioner shows that he approbated and reprobated at the same time as the petitioner on the basis of LOI voluntarily agreed to undertake the clearance of limestone from the site, but is avoiding the performance of contractual obligations while playing hot and cold at the same time by denying his liability to pay DMF contribution. Paragraph nos.61 to 63 of the judgement of this Court in the case of ***Palika Towns LLP Vs. State of U.P. and Others*** passed in Writ-C No.10123 of 2021 are reproduced herein below:-

> *"61. The Hon'ble Apex Court in the case of R.N. Gosain Vs. Yashpal Dhir reported in (1992) 4 SCC 683 has observed as under:-*

"10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that "a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage". [See: Verschures Creameries Ltd. v. Hull and Netherlands Steamship Co. Ltd., (1992) 2 R.B. 608, at p.612, Scrutton, L.J.]. According to Halsbury's Laws of England, 4th Edn., Vol.16, "after taking an advantage under an order (for example for the payment of costs) a party may be precluded from saying that it is invalid and asking to set it aside". (para 1508)."

62. The Hon'ble Apex Court in the case of Shyam Telelink Limited vs. Union of India, reported in (2010) 10 SCC 165 has observed as under:

"23. The maxim qui approbate non reprobate (one who approbates cannot reprobate) is firmly embodied in English Common Law and often applied by Courts in this country. It is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. A person cannot approbate and reprobate or accept and reject the same instrument."

63. The Hon'ble Apex Court in the case of Cauvery Coffee Traders, Mangalore vs. Hornor Resources (International) Company Limited, reported in (2011) 10 SCC 420 has held as under:

"34. A party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience. (Vide: Nagubai Ammal & Ors. v. B. Sharma Rao & Ors., AIR 1956 SC 593; C.I.T. Vs. MR. P. Firm Maur, AIR 1965 SC 1216; Maharashtra State Road Transport Corporation v. Balwant Regular Motor Service, Amravati & Ors., AIR 1969 SC 329; P.R.

Deshpande v. Maruti Balaram Haibatti, AIR 1998 SC 2979; Babu Ram v. Indrapal Singh, AIR 1998 SC 3021; Chairman and MD, NTPC Ltd. v. Reshmi Constructions, Builders & Contractors, AIR 2004 SC 1330; Ramesh Chandra Sankla & Ors. v. Vikram Cement & Ors., AIR 2009 SC 713; and Pradeep Oil Corporation v. Municipal Corporation of Delhi & Anr., (2011) 5 SCC 270).

35. Thus, it is evident that the doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and

reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had."

100. Paragraph no.10 of the judgement of Apex Court in the case of ***The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Limited*** in Civil Appeal Nos.7252-7253 of 2023 is reproduced herein below:-

"*10. Thus, it is evident that the doctrine of election is based on the rule of estoppel- the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppels in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had."*

101. From the proposition laid down by the Apex Court in the above cases, the law is no more res-integra that a party cannot approbate and reprobate at the same time as once it becomes beneficiaries of certain documents/instruments then such a party cannot choose to honor the commitment of certain parts of the said document/instrument which are beneficial to it and wriggle out of those conditions which puts liability upon it.

102. Applying the aforesaid principle of law postulated by the Apex Court in the aforesaid case, the petitioner cannot deny its liability to pay DMF contribution.

103. So far as the argument of learned counsel for the petitioner that in view of Rules 2(1)(b) and (c) of Rules, 2017, the concept of DMF requires continuous mining operations and not incidental extraction of minerals as in the latter case, there would be no impact on the persons and areas as is otherwise in case with full fledged mining operation is concerned, it would be apposite to reproduce Rule 2(1) (b) & (c) of Rules, 2017:-

"*Rule 2 (1)- In these rules, unless the context otherwise requires-*

(b) "affected area" means any area where mining operation is being done or going on.

(c) 'affected person' means a person who sustain injury in person or sustain damage of his property by mining related activity."

104. As per Rule 2(1)(b), the 'affected area' is an area where mining operation is being done or going on. It has been held above that mining activity undertaken by the petitioner under the contract for clearing mineral i.e. limestone is 'mining operation' as defined in Section 3(d) of the MMRD Act. The 'affected person' as defined in Rule 2(1)(c) of the Rules, 2017 means a person who sustained injury in person or sustain damage of his property by mining related activity.

105. The contention of learned counsel for the petitioner that liability to pay DMF contribution would arise only if there was continuous mining operation which means full fledged mining operation, and not an incidental extraction of minerals as in such cases, there would be no impact on the persons and areas, in our opinion, is misconceived and based on misinterpretation of provisions of MMRD Act and Rules, 2017.

106. 'Affected Area' as defined in Rule 2(1)(b) of Rules, 2017 is an area where mining operation is being done or going on. The 'mining operation' has been defined in Section 3(d) of the MMRD Act. In the instant case, we have given above elaborate reasons to conclude that the activity which the petitioner had undertaken under the contract comes within the purview of mining operation.

107. The Apex Court in the case of ***Allahabad Bank and Another Vs. All India Allahabad Bank Retired Employees Association (2010) 2 SCC 44*** has explained as to how welfare, beneficial or social justice oriented legislations should be interpreted. Paragraph nos.16 & 17 of the said judgement are being reproduced herein below:-

"16. We shall proceed to examine the point urged by the learned counsel for the appellant. Remedial statutes, in contradistinction to penal statutes, are known as welfare, beneficent or social justice oriented legislations. Such welfare statutes always receive a liberal construction. They are

required to be so construed so as to secure the relief contemplated by the statute. It is well settled and needs no restatement at our hands that labour and welfare legislation have to be broadly and liberally construed having due regard to the directive principles of State policy. The Act with which we are concerned for the present is undoubtedly one such welfare oriented legislation meant to confer certain benefits upon the employees working in various establishments in the country.

17. Krishna Iyer, J. in Som Prakash Rekhi vs. Union of India' stated the principle in his inimitable style that a benignant provision must receive a benignant construction and, even if two interpretations are permissible, that which furthers the beneficial object should be preferred. It has been further observed: (SCC pp. 483-84, para 66)

> *"66.... We live in a welfare State, in a 'socialist' republic, under a Constitution with profound concern for the weaker classes including workers (Part IV). Welfare benefits such as pensions, payment of provident fund and gratuity are in fulfilment of the directive principles. The payment of gratuity or provident fund should not occasion any deduction from the pension as a 'set-off'. Otherwise, the solemn statutory provisions ensuring provident fund and gratuity become illusory. Pensions are paid out of regard for past meritorious services. The root of gratuity and the foundation of provident fund are different. Each one is a salutary benefaction statutorily guaranteed independently of the other. Even assuming that by private treaty parties had otherwise agreed to deductions before the coming into force of these beneficial enactments they cannot now be deprivatory. It is precisely to guard against such mischief that the non obstante and overriding provisions are engrafted on these statutes." (emphasis supplied)*

108. It is relevant to point out here that neither MMRD Act nor the Rules, 2017 recognises anything as continuous mining operation which means full fledged mining operation. It only speaks about mining operation which means any operation undertaken for winning any mineral. The ‘affected area’ as defined in Rule 2(1) (b) of Rules, 2017 only speaks about the mining operation. It further states that any area in which mining operation is being done or undertaken under the MMRD

Act or Rules, 2017 is an 'affected area'. As per Rule 2(1)(c), a person who sustain injury or sustain damage of his property by mining related activity would be an affected person.

109. Perusal of Section 9-B of the MMRD Act discloses that it has been inserted in the Act with an object to provide help and aid to the area affected by mining operation and to a person who sustain injury or suffer damage to his property because of mining operation in his area, and if narrow interpretation is given to Section 9-B as suggested by the petitioner that would frustrate the very object and purpose of induction of such beneficial provision.

110. The rationale behind creating the DMF has been defined in Rule 3 of Rules, 2017 which is reproduced herein-below:-

> *"3. Objectives of the trust-The objectives of the trust will be-*
>
> *(i) to work for the interest and benefit of persons and areas affected by mining operations or other related activities and transportation of minerals;*
>
> *(ii) to utilize the funds collected in the District Mineral Foundation for the benefit of affected person or areas;*
>
> *(iii) to utilize the funds on the advice of concern Gram Panchayat to develop the village road, watering place and other general facilities."*

111. The object behind creating DMF can be discerned from Rule 3 of Rules, 2017 that it is a benevolent provision inserted with an object to provide help and aid to the affected person and affected area because of mining activity carried out in that area. The law is settled that a benevolent provision should be interpreted liberally to achieve the purpose for which it has been enacted. In other words, the interpretation of beneficial legislation involves liberal and purposive construction to achieve the statute's underlying aim to ensure the welfare of the intended beneficiaries. Therefore, narrow interpretation to Section 9-B would render otiose the very object of the insertion of Section 9-B of MMDR Act which is for the benefit of people at large who are affected by mining operation and suffer injury and damage because of mining operation.

112. The judgement of Apex Court in the cases of ***Nathi Devi Vs. Radha Devi Hupta, 2005 (2) SCC 271*** & ***Union of India Vs. Hansoli Devi, 2002 (7) SCC 273*** relied upon by the learned counsel for the petitioner on the point that interpretative function of the Court is to discover a true legislative intent is concerned, we find that the proposition laid down in the aforesaid case helps the respondent inasmuch as we have held above that the object of DMF contribution charged from the petitioner is for the purpose to benefit the area and the persons affected by mining operation, and therefore, the spirit of charging DMF contribution from the petitioner is to fulfill and carry out the object and true intention of the legislature for inducting Section 9-B, therefore, the aforesaid two judgements do not come to the aid of the petitioner.

113. So far as the judgement of Apex Court in the case of ***State of Kerala Vs. Kerala Rare Earth and Minerals Limited 2016 (6) SCC 323*** relied upon by the learned counsel for the petitioner that if the law requires particular thing to be done in a particular manner then, it would be done in the prescribed manner alone, we find that the demand of DMF contribution is in accordance with the provisions of the MMRD Act and Rules, 2017. The petitioner could not demonstrate that the levy of DMF is hit by any provision of the MMRD Act and Rules, 2017, or is against the public policy. The petitioner is bound by the terms and conditions of E-Tender notice and LOI and is liable to pay DMF contribution, therefore, the said judgement is also of no help to the petitioner.

114. So far as the contention of learned counsel for the petitioner that contribution towards DMF amount should be based upon percentage of royalty as computed in terms of Second Schedule of MMRD Act and not based on any auction amount is concerned, we find that the said contention is also not sustainable for the reason that it is the highest bid on which petitioner was granted LOI, and the bid amount is nothing but the royalty paid by the petitioner to the State Government for obtaining permission to secure the limestone.

115. Section 9-B (5) of the MMRD Act is specific and provide that the leaseholder is liable to pay an amount which is equivalent to such percentage of royalty paid in terms of Second Schedule of MMRD Act not exceeding one third of such royalty. The royalty paid by the petitioner under LOI is the royalty paid in terms of Second Schedule inasmuch as the 'royalty' prescribed in respect to limestone at Serial No.26 of Second Schedule of the MMRD Act is the minimum royalty, and the bid amount of the petitioner is the royalty in terms of Section 9-B (5) of the MMRD Act based on which DMF contribution is to be calculated.

116. Paragraph no.3 of LOI, extracted above, also quantifies Rs.4,06,95,150/- as amount payable by the petitioner towards DMF contribution, and by the order dated 01.06.2018, the petitioner has been asked to deposit 10% of the royalty towards DMF contribution.

117. As held above that incorporation of Section 9-B in the MMRD Act is for the benefit of persons affected by the mining operation, therefore, being a beneficial piece of legislation it should be given liberal interpretation which may achieve the object of the legislation. In such view of the fact, the aforesaid contention of learned counsel for the petitioner is misconceived and is rejected.

118. Further, we may add that para-16 of the E-Tender notice, extracted above, stipulates that the bidder is liable to pay DMF contribution as per rules, and para-3 of the LOI has been issued specifying the amount of Rs.4,06,95,150/- which the petitioner is liable to pay towards DMF contribution and LOI has been issued on the terms and conditions stipulated in the LOI, and the petitioner having accepted the LOI by paying royalty and by complying with the other terms and conditions of the LOI, therefore, petitioner is bound by terms and conditions stipulated in paragraph-3 of the LOI, hence, he cannot deny his liability to pay the said amount towards DMF contribution disputing the fact that the DMF contribution should have been based upon percentage of royalty as

computed in terms of Second Schedule of MMRD Act and not based on auction amount.

119. So far as the judgement of Apex Court in the case of ***Kalabharti Advertising Vs. Hemant Vimalnath Narichania, 2010 (9) SCC 437*** is concerned, there is no quarrel with the proposition laid down by the Apex Court in the said case that the State shall act fairly and without malice. However, in the instant case, the petitioner failed to demonstrate that respondent-State has not acted fairly and has acted with malice, therefore, said judgement is not applicable in the facts of the present case.

120. Thus, for the reasons given above, find that the writ petition lacks merit and deserves to be dismissed.

121. Accordingly, writ petition is ***dismissed*** with no order as to costs.

122. Interim order, if any, stands vacated.

December 19, 2025

Sattyarth/NS

(Amitabh Kumar Rai,J.) (Saral Srivastava,J.)