

De Jure

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Mining Industry – A New Dawn Amid Challenges



Introduction

Mining is one of the core sectors and growth driver of Indian economy. Minerals and ores provide basic raw materials to many important industries like power generation (thermal), iron and steel, cement, petroleum and natural gas, petrochemicals, fertilisers, precious & semi-precious metals/stones, electrical and electronics equipment, glass, ceramics etc.

The COVID 19 pandemic has adversely affected the mining of ferrous, non-ferrous and minor minerals. The operations of mines - iron ore, coking coal, thermal coal, limestone, dolomite, manganese and chromite and running of ferro alloy and pellet plants (which supply raw material to steel plants) covered under “essential services” and exempted from the nation wide lockdown.

What is ailing the mining industry

The mine owners and operators are finding it difficult to carry mining activities. This is due to business disruptions and operational difficulties (*non-availability of requisite workforce, restriction on free movement of men and material, high risk of spread of pandemic, disruption of port operation*), exacerbated by fall in demand from downstream industries and manufacturers of white goods. Stopping production and shutting down the smelters, blast furnace is a costly affair and generally not a viable option.

The mining industry is liable to pay various types of taxes - direct taxes (*Corporate Income Tax or Minimum Alternative Tax*), indirect taxes (*Custom Duty, Service Tax, Value Added Tax etc.*) and mining levies (*Royalty or Dead Rent, contribution to National Mineral Exploration Trust*

and District Mineral Foundation, Surface Rent, etc., if applicable). While these taxes and levies are a big source of revenue for the Government, they have added to the woes of the mine operators and developers.



Despite various steps taken by the Central Government to encourage liquidity, foreign investment and to remove policy and regulatory hurdles, the banks and NBFCs have always been wary of lending to mining sector; primarily due high risk, large exposure and small margins. The lockdown has further battered this ailing sector.

Legal Challenges

In light of the current COVID-19 pandemic, the mine owners and operators are facing a new challenge. They need to ascertain their rights and obligation under the existing mining lease agreement, finance documents, project and construction finance, equipment lease, subcontracts of various mining operation, drilling contracts, off take agreements, advance purchase and sale agreement and other related contracts. They also need to factor whether any event of default, force majeure, frustration, change in law, material adverse change has triggered in any of the agreements.

The finance documents are required to be carefully considered for continuing representations, undertakings, covenants (*positive and negative*) given by the borrowers

to the lenders (*Indian or foreign*), securities offered, guarantees, indemnities, performance bonds, liquidated damages. In fact, as a usual practice, the borrowers are also required to maintain debt-equity ratios, manage cross default risk and provide additional security in case the same is eroded.



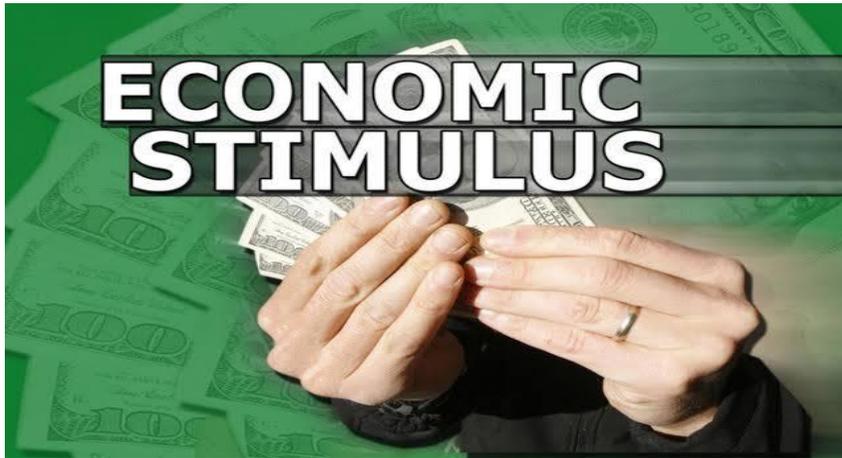
Mine owners and operators as part of their contractual understanding are required to take insurance cover for which they pay hefty premium. The existing insurance

policies need to be vetted to ascertain whether the same has adequate force majeure clause, endorsements to cover loss of profit, loss due to business interruption - whether property damage or even arising out of shutdown due to pandemic or whether the policies exclude coverage for virus, contagious disease or bacteria.

In this article, we have limited ourselves to highlighting few areas of concern for mine owners and operators without delving into the meaning and concept or analysing the application and consequences of the same.

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Economic Stimulus



The Government of India has taken several steps to help industries brave the aftermath of the pandemic. On May 16, 2020, the Finance Minister of India has, in continuation to the economic stimulus package in light of COVID-19, announced certain structural reforms in relation to coal and other minerals.

The decision to permit commercial coal mining on revenue sharing basis, with easy entry and exit norm is viewed as

an attempt to attract and allow domestic as well as global players to help ramp up coal production in India.

A composite exploration-cum-mining-cum-production regime has been introduced in mineral sector and 500 blocks are proposed to be auctioned through an open and transparent auction process. Joint auction of bauxite and coal mineral blocks has also been introduced to enhance the competitiveness of aluminum industry. The Cabinet Committee on Economic Affairs has approved the methodology for auction of coal and lignite mines.

Even the distinction between captive and non-captive mining has been abolished. This not only removes the preference which was earlier given to captive miner but also allows the captive mine owners to sell their output in the open market. The Government has taken initiatives

in the right direction and has paved the way forward amid challenges.

Conclusion

The reforms initiated by the Government are aimed to impact the sectors which are considered new horizons of growth, with the aim to unleash new investment, boost production and create jobs. During these challenging times it is essential that the mine owners and operators take steps to carefully analyse and effectively navigate the legal challenges and propel the mining industry towards a new dawn.

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