Please refer to your D.O. letter No. IVA-SM-120/11/235/CS/SM dated 21st October 2011 addressed to Shri S. Vijay Kumar, and D.O. No. 7026/SM/V/A SM-120/2010 dated 7th September 2011 from Shri Manoj Ahuja, Secretary Mines, Government of Orissa, regarding violation of annual production limit laid down in approved mining plan and action taken by IBM in the last 10 years. It has been made known to me that in order to better appreciate the concerns, and improve coordination between the State and IBM, the Ministry had scheduled meeting on 8th November 2011, in which the State Government did not participate. However, this matter has been seen in detail by the IBM, based on which I would like to give Ministry’s response as below.

2. While the Ministry appreciates that the State Government has finally taken a number of steps to curb illegal mining and has started taken stringent action on illegal miners, in respect of overproduction of minerals, the Ministry is of the opinion that the State Governments have always been kept aware of the mining plan details and violations, if any, by the miners, including details of mining plan, modification of plan and violations by the miners in the last ten years. In principle, the objective of endorsing this information is not merely to enable State Governments to be informed but also facilitate the State Governments as the owners of the minerals (and lessor) to exercise an efficient control on mineral despatch through correlating mining plan or violation details with proper accounting of the minerals produced and dispatched on Transit Permit after collecting royalty dues.

3. It may not be correct to state that this mineral regulation is exclusively possible only in terms of the provisions of Mineral Conservation and Development Rules, 1986. The State Directorate of Mining and Geology has a clear mandate to undertake onsite inspection of the mineral mined out for assessing the quantum and quality under section 24(1) of the MMDR Act, 1957, particularly essential for proper assessment of royalty payable. Further, the State Government has sufficient powers flowing out of the provisions of Rule 27 (1) (i) & (f) of the MCR, 1960, which allows the State Government officers to examine the accounts, plans and records maintained by the lessee on minerals obtained and dispatched, and on the trenches, pits and drillings made by the lessee. Combined with the powers aforesaid, the State Government has the exclusive powers to restrict the issue of Transit Permit (which is required for authorizing movement of every truck load of mineral) rather than relying solely on the IBM to identify the cases of overproduction/dispatches at mine level on daily basis.
As per sub-Rule (5) (v) of Rule 22 of Mineral Concession Rules, 1960 (MCR), the IBM approves a tentative programme of excavation in the mining plan, which forms the basis for ensuring scientific mining and the Plan details are reviewed every five years. However, this does not preclude a miner to modify his mining plan in terms of Rule 22(6) of the MCR and Rule 10 of Mineral Conservation and Development Rules, 1988. This flexibility in the law ensures that a miner extracts complete grade of ore as they occur, including lower grade and sub-grade ore (not having market value then and discovered along with mining operations), and stack them for future use, irrespective of market demand. Apart from the modification in the Mining Plan under Rule 10 of the MCDR, 1988, ratification of the modifications in the Mining scheme on a five-yearly basis in terms of Rule 12 of the MCDR, 1988, only after a field inspection by the IBM, after taking into account the possible systematic development of the deposit and actual development undertaken by the lessee subject to confirmation with the conditions in the Environment and Forest clearances. The Mining Plan is thus a dynamic document with a focus primarily on the need to ensure safe and scientific mining, development of minerals and protection of environment and reasonable variation in mineral production is possible.

5. Subsequent to your concerns on excess production, an analysis of production and violations in 104 mining leases for bulk minerals in Orissa (Annexure) in the last ten years as reported by the State Government, was undertaken by the IBM (copy of IBM Report is enclosed). In 71 cases it has found excess ore produced beyond reasonable variation limits (20% deviation from mining plan). Instances of excess production are attributed critically to failure by the State machinery to restrict movement of minerals from the mining leases due to inadequate correlation with the production figures in the approved Mining Plan. The powers of restriction on mineral movement lie exclusively with the State Governments as the sole statutory authority to collect royalty and authorize movements. However, in most of these cases the IBM has diligently reviewed the Mining Scheme and after proper field inspections, has approved scheme of mining for subsequent mining. However, this does not preclude the State Governments to use the information on excess production to initiate action under the provisions of Rule 27(1)(u) of Mineral Concession Rules 1960, for non-compliance of the provisions of MCDR 1988, in terms of the MCDR 1988, on a land occupied by lawful authority by the lessee, i.e. the lease area. And in case of any production of mineral on any land occupied by a lessee without lawful authority, i.e. any land outside the lease area, section 21(5) of the MMDR Act, 1957 provides powers to the State Government to recover the mineral raised, or in case the mineral has been disposed to recover the price, rent, royalty or tax exclusively as violations of the MMDR Act, 1957, or Rules framed there under. Similarly, you may appreciate that in case of violations of provisions of other Central Government laws, including Environment (Protection) Act, 1986, Forest (Conservation) Act, 1980, Mines Act, 1952, the Directorate of Mining and Geology in the State Government should ensure that such violations are immediately brought to the notice of the concerned Departments so that necessary action is initiated under such laws, i.e Environment (Protection) Act, 1986 or the Forest (Conservation) Act, 1980 or the Mines Act, 1952. I assure you that the IBM will fully cooperate in this exercise.
6. At this point, let me bring to your notice several recent initiatives for better coordination between IBM and State Governments. Primary among them is the amendment of Rule 45 of the MCDR, 1988, which allows every miner/trader/stockist/exporter/end-user of mineral to be registered and report on monthly and annual basis on their transactions to the IBM and the State Governments, and thus facilitating a tool for efficient monitoring. The matter has been discussed in the past few meetings of the Central Coordination-cum-Empowered Committee meetings in the Ministry in which the representatives of State Governments also participate. It would be appreciated if the State Government is able to focus on ensuring that all miner/trader/stockist/exporter/end-user of minerals are registered and commence regular reporting. Further, I would also request for a Joint Inspection by IBM and State Government of all the iron ore mines which have been found to be violating the mining plan, particularly in context of implementation of reporting mechanism of Rule 45 of the MCDR.

7. Apart the above, the Central Government has also requested all the State Governments to:
   - computerize the system for collection of royalty and issue of transport permits on similar basis as the Online Royalty Pass System implemented by (n)Code Solutions, a Division of Gujarat Narmada Valley Fertilizers Company (GNFC) Ltd.
   - include representatives of Railways, Customs, Ports and in case of iron ore producing States, representative of Ministry of Steel in the State Coordination-cum-Empowered Committees set up in the State, for better monitoring of the transportation and export of ore.
   - send list of mineral concession cases pending with Ministry of Environment and Forests for clearances.
   - impose the special condition under Rule 27(3) of Mineral Concession rules, 1960 for ensuring that all the mining lease holders assess the resources in their leases as per the UNFC.
   - be more actively engaged in improving the quality of mineral administration, by increasing personnel at railway sidings, removal of restrictions on loading of ores in sidings not used optimally, improving security features of the transit passes, take action against overloading of trucks which is a substantial factor in royalty evasion besides being responsible for deteriorating road quality in mining areas and increasing transport inefficiency, putting in place in-motion weigh-bridges and modernization of check-gates, registration of loading contractors and transporters, better enforcement through intelligence sharing, enforcement squads, joint inspection, mining cell in police organization etc.

8. Let me also take this opportunity to reiterate again that all State Governments have been requested to prepare an Action Plan at State level for developing the capacities of the State Directorate for increasing the effectiveness of their regulation. This issue has been extensively discussed in the CCEC meetings. As you are aware that the new draft MMDR Bill, 2011 proposes a separate revenue stream for this purpose as a cess to be levied at a rate not exceeding 10% of the royalty, it would be optimum for the State Government to immediately gear up its machinery for the purpose
through development of a suitable Action Plan inline with the other suggestions of the Central Government. I am sure all these measures, and powers of State Government under section 24(1) of the MMDR Act, if executed, would not only streamline the regulatory regime, but also ensure that the menace of illegal mining is greatly reduced.

Regards

Yours sincerely,

(Vishwapati Trivedi)

Encl: As above

Shri B.K. Patnaik
Chief Secretary
Government of Orissa
Bhubaneswar