

CONVERSATIONS: National Mineral Policy 2019 — balancing stakeholder interests and concerns

National Mineral Policy 2019: a Remedy as Bad as the Disease?

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1. INTRODUCTION

The mineral sector is regulated through the Mines and Minerals (Development and Regulation) Act 1957 (MMDR Act) enacted by Parliament, and the rules thereunder and the changes in the law (and rules) and the policy have generally been going in step. The MMDR Act was amended in 2015, primarily to make auction the sole mode of granting mineral concessions (i.e. prospecting licences and mining leases). Some consequential changes were also made in the rules: the National Mineral Policy (NMP) of 2019 is thus primarily a revision of NMP of 2008. One of the important consequences of the change in the law (and now in the policy as well) is that, despite some phrases in the policy to the contrary, the private sector no longer has an incentive to do exploration to locate minerals at their own risk and cost, since that will not enable them to claim mining rights, as these rights will be auctioned to the highest qualifying bidder (Kumar 2019).

Two other major changes in NMP 2019 compared to the 2008 policy need to be noticed. One aspect is the linking of NMP 2019 with the vision of “Make in India” (GoI 2018) announced by the Prime Minister in 2014 and amended subsequently, which includes the mining sector.¹ The second is the introduction of a concept of “inter-generational equity” based on

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¹ The “Make in India” initiative is intended to give a boost to entrepreneurship in India in 25 identified sectors in manufacturing, infrastructure and services.

aspects like available reserves/resources. In this context, the perspective of Basu (this issue) that mineral extraction needs to be accounted for as the sale of inherited wealth is an interesting view.

2. STAKEHOLDERS AND THEIR INTERESTS

The key stakeholders of NMP 2019 are: the states; the central government; local communities adversely affected by mining-related activities; NGOs in support of local communities or environmental issues; the mining industry in general; other upstream and downstream industries; and citizens (including future generations) concerned with the quality of life.

The following main conclusions may be drawn:

- **Auctions:** The Central Government supports auctions because it purports to bring in “transparency” and reduce “discretion”. The mineral-rich states, too, support auctions, since it potentially increases their revenues. The mining industry, in general, is not in favour of the auctions as it increases their costs, creates an impression of the scarcity, and interferes with market forces; however, the larger players in the metal-making industry with deep pockets find auctions a good way of increasing their raw material security. Local communities may currently see no difference between the mining based on the earlier system and the mining based on the auctions; but the reality is that the auctions will transfer the substantial surplus to the states leaving that much less to be potentially invested (by way of Corporate Social Responsibility, etc.) in local communities. While the general view is that through the auctions route the mining companies will no longer be able to make windfall profits, NGOs working with local communities may prefer a larger share of the revenues being invested locally rather than being deposited in a state treasury. Exploration agencies (upstream industry consisting of domestic companies like Geomysore and Indo-Gold and Indian arms of foreign companies like Rio Tinto, Anglo-American etc.) are, as mentioned, the most severely impacted.
- **Make in India:** Downstream industry (process R&D, metal making and manufacturing) is likely to be adversely impacted, in the long run, by the higher prices of mineral ore consequent to the auction process. In the long term, because of disincentive to conduct exploration, many metals (including technology metals, energy-critical metals, platinum group of metals, etc.) used in new technologies will remain undiscovered. This will increase the already

high import dependence of domestic industry and may affect the competitiveness of Indian manufacturing.

- **Intergenerational equity:** The 2019 policy seeks to address inter-generational equity in the obvious way – by apportioning known resources in a conservative manner over time. Jain (this issue) has mentioned about attracting investments and ensuring the welfare of the communities. Those opposed to mining *per se* as an unsustainable activity will clearly prefer the approach of NMP 2019. Unless exploration is incentivised, and the resource-cum-reserve base is continuously augmented through new discoveries of minerals, the policy will adversely impact the mining industry as well as the downstream industry to the extent that recycling cannot meet the need. As mentioned by Ranjan (this issue) trade-offs arising from increasing mining activities need to be considered carefully.

3. BALANCING ACT(S)

Clearly, the challenge is to reconcile the concept of auctions as the “non-discretionary” way of granting mining leases with incentives for mineral exploration. In other words, some way must be found to reward a successful exploration effort. Currently, the alternative idea on the table is to apply the auction process only to the “bulk” minerals like iron ore, bauxite and limestone, where the exploration is a relatively simple process and risk is low since these minerals occur over large areas and close to the earth’s surface. In such cases, the exploration agencies can be paid for their work from public funds. In respect of the remaining minerals, which are likely to be found at depths and where the risk to successful location is high, expenditure from public funds can be difficult to be justified. In such cases, assurance of the mining lease rights in line with international practice is the only way of incentivizing exploration (Kumar 2019). This may require the Central Government to acknowledge that auction need not be the only mode of disposal of natural resources. Legally there is no difficulty because unlike the common public perception, the Supreme Court in its opinion dated September 27, 2012, on the reference by the President of India, actually stated that (Special Reference No.1 of 2012 under Article 143(1) of the Constitution of India) auction is not the only way of discharging a public trust while alienating natural resources.²

² See Kumar and Ganeshan (2017) on why the Supreme Court was right when it said that the submission that “[...] disposal of a natural resource for commercial use must be for revenue

Another alternative is to turn the clock back to the pre-2015 position and return to a situation where exploration is incentivized through the grant of mining lease rights, but where prospecting (and mining) concessions may be discretionary based on MoUs with industry, or an effort to promote the public sector. Some strengthening of the process can be envisioned which will reduce the scope of “arbitrary discretion”. However, given the recent history of the 2G spectrum and coal licence cases, it will be very hard to justify such a framework which will give the impression in the public mind of windfall profits and crony-capitalism.

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maximization, and thus by auction, is based neither on law nor on logic.... besides legal logic, mandatory auction may be contrary to economic logic as well.”