

Statement of Facts

1. The Territory of INDIA, a developing country, flourished in the era of industrialisation, is largely an industrial economy with about 40% of the population involved in and carrying out agricultural Activities. INDIA is rich in atomic resources, especially Uranium. The Uranium ores are, to a great extent, found in the mineralized zone of 'HITHRO', declared as a 'Scheduled Area' under Panchayat (Extension of Scheduled Areas) Act, 1996', which has a total cover area of 25 sq. km. in the 'Reserve Forest' of SWADESHI, an area of 125 sq. km, home to the Indigenous tribal communities 'LETRIA', 'LORTEP' and 'LANOITAN', of about 400 to 450 in number, in the STATE OF REALKHAND.
2. The aforementioned tribal communities derived their means of livelihood from the forest lands of SWADESHI by carrying out activities such as apiculture, gathering of herbs, flowers and fruits and collection of gum dust and other produce. Although SWADESHI was rich in atomic resources, the commercial exploitation of the same was not permitted, as INDIA took pride in the natural biodiversity comprising of rare flora and fauna, including the bar-headed goose and tufted duck that it possessed, in the forests of SWADESHI. Further, the lands and the rocks of SWADESHI were considered as a sacred place by the indigenous tribes that resided therein.
3. INDIA incurred an electricity-crisis as on 12th January 2012 that led to a situation of reduced supply of electricity for major areas of the Industry. The result of this was that several industries had to be closed down, temporarily, and several workers were either laid off, and/or retrenched in accordance with law. On 26th May 2012, The 'ALL INDIA LABOUR FORUM' approached the SUPREME COURT OF INDIA, and sought to quash the Permission accorded to the

Industries, by the appropriate Government to lay-off the employees, and also to direct the GOVERNMENT OF INDIA [Hereinafter, GoI] to provide for a remedy to the power crisis, that has affected their Right to Livelihood, guaranteed under the Constitution of INDIA. The Court passed an order [SEE, ANNEXURE A] that directed the GoI to initiate action so as to resolve the electricity crisis.

4. The GoI, on 20th August 2012, in light of the Report submitted by the DEPARTMENT OF ATOMIC ENERGY [Hereinafter, DoAE] on 11th July 2012 [See, Annexure B: Part-II], leased an area of 45 sq. km, inclusive of the Scheduled Area, from the lands of SWADESHI, for a period of fifty years, to URANIUM CORPORATION OF INDIA LIMITED [Hereinafter, UCIL], a fully owned entity of the DoAE, India.
5. In the months of August-September 2012, there was a protest that was undertaken by the Indigenous communities alleging that the said mining activity would hinder their livelihood and peaceful existence in the forests of SWADESHI. Further, SWADESHI SURAKSHA SAMITI [Hereinafter, SSS], a Non-Governmental Organisation, protested that Uranium mill tailings retain about 85% of the original radioactivity of the ore, and it is very difficult to minimise releases of radioactive decay products such as Radium and Radon as well as heavy metals, given the developing economy of India.
6. On 16th December 2012, UCIL gave a Tender Notification, to sub-lease the process of extraction of minerals from the ores of SWADESHI, whereby RUSTAM URANIUM CORPORATION PRIVATE LIMITED [Hereinafter, RUC], registered under the Companies Act, 1956, by reason of being the highest bidder, was granted the lease on January 30th 2013. As per the agreement between the UCIL and RUC, the Extracted Minerals are to be owned by the UCIL, and the

land is leased to RUC for a period of 30 Years, commencing from the date of grant of 'Environmental Clearance', by the 'Ministry of Environment and Forests, Government of India', for the process of extraction. Further, the agreement provided that the complete output of RUC shall be provided to the UCIL, and payment for extraction of the same shall be made, by UCIL, at the rate prescribed by the 'Evaluation Committee' to be constituted by the DoAE. The Evaluation Committee shall give due recognition to the 'Pricing Strategy' evolved in consultation with technical and market experts.

7. The RUC applied for an Environmental Clearance [Hereinafter, EC], after due compliance with the necessary Rules and Regulations in this regard, on 13th July 2013. The Gram Panchayats, living in and around the vicinity of the Forests of SWADESHI, were consulted in a Public Hearing on 17th August 2013, in respect of the Environmental Clearance for carrying out the Mining-operations. The Gram Panchayats did not raise any objections against the Project. The Notification that provided for a Public Hearing of the tribal community, residing in SWADESHI, scheduled to be held on 19th August 2013, was cancelled on the ground that the said lease-area was within the Reserved Forest and the property rights of the same, vested with the Government and as such a Hearing need not be made.
8. On 1st June 2014, A Conditional Environmental Clearance was granted for a period of 30 years [SEE, ANNEXURE C]. On 5th July 2014, RUC managed to get a Forest Clearance for carrying out the mining activities in the Reserve Forest Area.
9. The tribal communities were not in favour of the Project, they agitated, in vain, on grounds that they were to be displaced of the lands that were their homes and were also sacred to them. SSS, espoused the cause of the tribal communities, alleging

that the rights of the tribal communities would be affected by mining activity and alleged that the Environmental Clearance that was granted was not in consonance with the objects of the Environment (Protection) Act, 1986 and the Forest Conservation Act, 1980, and thereon filed a Writ Petition under Article 32 of the Constitution of India, on 14th July 2014.

10. The following assumptions are to be made by the Parties and the same shall not be rebutted to be otherwise:

- i. The Constitution and Legislations referred to in the Fact-Sheet shall be deemed to be a reference to the relevant law of India, and all other laws of India shall be *in pari materia* to the laws applicable to the Moot-Problem.
- ii. “Reserve Forest”, shall mean a forest under “ Chapter II of the Indian Forest Act 1927”;
- iii. “Scheduled Area”, shall mean an area, as defined, under ‘Panchayat (Extension of Scheduled Areas) Act, 1996’.

11. The Participants may raise any other Issue on the given facts, but shall argue on the following:

- I Whether the local remedies have been exhausted?**
- II Whether the Rights of the tribal communities are infringed by the Mining Project?**
- III Whether the Environment Clearance is valid?**

ANNEXURE A

Relevant Extracts of the Decision of the Supreme Court of India in

All India Labor Forum v. Union of India [W P No: xx/2012 dated xx/2012]

1. In the challenged order of the Government of India dated 10-03-2012, 15-03-2012, 11-04 2012 and; which gave prior permission to the Industries to Lay Off their Employees on account of the prevailing power crisis, (by the order dated 10-03-2012) Government granted prior permission to 15 industries, by order dated 15-03-2012 to 25 industries, by order dated 11-04-2012 to 39 industries.
2. The AILF challenged the orders of the Appropriate Government (which gave prior permission), on the ground of public policy, as it affected the livelihood of the several industrial workers, due to ‘lay-off’ and ‘Retrenchment’.
3. The Supreme Court of India quashed the orders of the Appropriate Governments, further identified that the power-crisis to be the root cause for the lay off and retrenchment and thereby directed the GoI to:
 - a) Submit a report as to why there is power crisis. [SEE, ANNEXURE B: Part I]
 - b) Appoint a Specialised Agency, viz. Department of Atomic Energy to prepare report about the alternative energy resources available in the country and Provide in the report for the means as to how the power crises have to be met. [SEE, ANNEXURE B: Part II]

ANNEXURE B

Part-I

Relevant Extracts of the

‘Report on Power-Crisis’

as submitted by the Government of India

“It is hereby submitted on the 10th day of June, 2012, that the prevailing Power crisis is due to the increase in the influx of Industrial activities across the territory of INDIA. The resources of the Country are not fully utilized to meet its’ requirements....”

“....The Department of Atomic Energy has been anointed with the task to submit a Report, in consultation with the Ministry of Environment and Forests, on deployment of a strategy for production of electricity with the use of Atomic Energy.....”

PART II

Relevant Extracts From the

‘Report of Department of Atomic Energy’

“A Report on the alternative energy resources that is available for the Production of Electricity, on the request of the Government of India, as submitted on 11th July 2012;

“.....In the given scenario, the production of electricity through the mining and extraction of Uranium from the ores of SWADESHI is most feasible...”

“.....The lands may be leased to UCIL and the Uranium Extraction Process can be suitably undertaken by the means of use of Leaching Process with the aid of Tailings Dam.....”

ANNEXURE C

Government of India

Ministry of Environment and Forests [MOEF]

Paryavaran Bhavan,

CGO Complex

New Delhi

TO

M/s RUSTAM URANIUM CORPORATION PRIVATE LIMITED,

UCIL Mines,

HITHRO ZONE,

REALKHAND

E-mail: uraniummining@rucl.in

**Subject: Application For Environmental Clearance For The
Commencement Of The Extraction Of Uranium From The Mines Leased To
UCIL In The HITHRO Zone**

Sir,

This is a letter granting Environmental Clearance in pursuance of the application made on 13th July 2013, and clarifications provided from time to time, on the subject mentioned above. The MOEF grants the Environmental Clearance vide this letter dated 01st June 2014, for a period of 30 Years, commencing from the Date of Grant of Forest Clearance.

The MOEF, grants the Environmental Clearance in accordance with “Environment Impact Assessment Notification”. The Clearance is thereby granted to M/s Rustam Uranium Corporation Private Limited, for an Annual Production Capacity of 1.65 million tonnes of Uranium Ore by use of the mechanised

method, involving the Total Lease Area of 45 sq. Km., subject to the following conditions and environmental safeguards.

A. Specific Safeguards

- i. The Environment Clearance is subject to the grant of Forest Clearance, for grant of permission to work in the Reserve Forest Areas of SWADESHI.
- ii. The Project shall ensure that no natural watercourse, prevailing within the lease area, shall be obstructed due to mining activities.
- iii. The Project shall develop effective emergency response procedure to ensure appropriate Risk Management System in the Public Domain, if any, due to the Project.
- iv. The land Oustees and Land Losers shall be compensated under the National Policy on Resettlement and Rehabilitation of Affected Families, 2007/State Government Norms.
- v. RUC shall endeavour to provide for Compassionate-Employment, to at least one Adult Member of each Family of the Indigenous Tribes.
- vi. RUC shall not put up any Permanent Structures within the Reserve Forest area, other than the ones required for the Core-mining activity.
- vii. RUC shall carry out the activity of Compensatory Afforestation for an area of 45 sq. Km.

General Conditions

- i. RUC shall contribute a sum of 2 percent of its average three years profits every year to the CAMPA Fund.

- ii. RUC shall allow the Indigenous communities to access the Forest for Firewood, Apiculture and such other livelihood rights in accordance to their customary practices.
- iii. Failure to comply with any of the Conditions above may result in the withdrawal of this clearance and attract action under the provisions of Environment (Protection) Act, 1986.

An Appeal against this Environmental Clearance shall lie to the National Green Tribunal, constituted under the National Green Tribunal Act, 2010.

Copy To:

- 1. Secretary of Mines, GOI
- 2. Chairman, Central Pollution Control Board and State Pollution Control
- 3. The Chief Wildlife Warden
- 4. District Collector, HITHRO
- 5. Monitoring File
- 6. Record File

Additional Director