

Chandrawat
& Partners

MINING INDUSTRY IN INDIA

A short guide on Mining Industry in India.

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ABOUT THE INDUSTRY

The Mining industry in India is one of the core industries of the economy. India's central government and state governments are jointly responsible for the mining sector's administration.

The principal legislation dealing with mining (other than petroleum and natural gas) in India is the Mines and Minerals (Development and Regulations Act, 1957), (the MMDR Act), which was introduced to ensure smooth mining operations by adhering to the objective of sustainable mining and allowing growth and development in the mining sector.

It was amended in 2015, 2016, 2020 and the latest being the Mines and Minerals (Development and Regulation) Amendment Act 2021.

It provides basic raw materials to many important industries. India is home to 1,531 operating mines and produces 95 minerals, which includes 4 fuels, 10 metallic, 23 non-metallic, 3 atomic and 55 minor minerals (including building and other materials).

Based on the geological mapping of the country, an area of 571,000 sq. km, out of a total of 3.1 mn sq. km. has been demarcated as an Obvious Geological Potential (OGP) area, where the geological potential for the occurrence of mineral deposits is higher.



India is the world's second-largest coal producer and the 5th largest country in terms of coal deposits. India targets 1.2 bn ton coal production by 2023-24. India has rich deposits of coal in the world. India's coal production increased by 32.57% to 67.59 Mn Ton (MT) from 50.98 MT during June 2022 as compared to June 2021.



STEEL

India has become the world's second largest producer as well as consumer of steel. During the financial year 2020-21, the total finished steel consumption in the country was 96.2 mn tonnes and is expected to reach about 160 mn tonnes (MT) by 2024-25 and about 250 MT by 2030-31.

KEY DEVELOPMENTS

In FY 2021-22, the average index of industrial production in the mining sector and basic metals manufacturing is 113.3 and 177.3, respectively, and has grown by 12.2 and 18.4 percent.

The index of mineral production in the mining and quarrying sector was 116.0 in April 2022 (base: 2011-12 = 100), 7.8% higher than the level in April 2021.

- The value of mineral production under the ambit of the Mineral Conservation and Development Rules ("MCDR") was INR 78,461 crore during the year 2021-22 as against INR 44,833 crore, which is the average for the years 2013 and 2015.
- Coal production increased by 7.6% in August 2022 over August, 2021. Its cumulative index increased by 22.7% from April to August 2022-2023 over the corresponding period of the previous year.
- Steel production (weight: 17.92 %) increased by 5.7 percent in July 2022 over July 2021. Its cumulative index increased by 6.5 percent from April to July 2022-2023 over the corresponding period of the previous year.
- Exports of mica, coal, and other ores and minerals, including processed minerals, were valued at USD 492.07 mn in June 2022, which recorded positive growth vis-à-vis June 2021 of 29.28%.
- Important minerals showing positive growth during July, 2022 over July 2021 include: phosphorite (39.3%), coal (11.2%), copper conc (8.8%), and zinc conc (5.9%).

GOVERNMENT ADVANCEMENTS



The Government of India has also set a target outlay of more than 111 lakh crore in the National Infrastructure Pipeline (NIP) by 2024-25, which will increase the demand for steel as well as reduce the cost of its production.

The slurry pipeline will cost more than 25,000 crores. The process involved in the installation of a slurry pipeline has also been simplified. The government has launched the "coking coal mission" to meet the demand for domestic coking coal as projected by the Ministry of Steel and has set a target of 140 Mn for raw coking coal production by 2030.

Coal India Limited (CIL) is constructing 21 additional railway sidings at an estimated investment of INR 3,370 crore across four of its subsidiaries, to be commissioned by the financial year 2024.

Coal India Limited also aims to move about 555 million metric tonnes of coal per year through mechanised means by the financial year 2024.

Minerals like manganese, lead, copper, and alumina are expected to witness double-digit growth in the years ahead. There is a significant scope for new mining capacities in iron ore, bauxite, and coal.

GOVERNMENT INITIATIVES

India is moving quickly with plans to revamp its mining sector to achieve its goal of making India a \$5 trillion economy. The Government of India has amended the Mines and Minerals (Development and Regulation) Act, 1957, from time to time to suit current needs. The latest amendments include certain amended provisions that would free up around 500 potential mining sites that have been rendered inaccessible by existing regulatory frameworks.

The Ministry of Coal has formulated a strategy to develop an integrated approach for eliminating road transportation of coal in mines and has taken steps to upgrade mechanised coal transportation and loading systems under "First Mile Connectivity" projects.

The Union Budget 2022-23 allocates the following funds:

- the total budgetary allocation for FY 2022–23 towards the Ministry of Coal is INR 393.24 crore;
- the total budgetary allocation for FY 2022–23 to the Ministry of Mines is INR 1,508 crore and
- the total budgetary allocation for FY 2022–2023 to the Ministry of Steel is INR 47 crore.

POST AUCTION MINING CLEARANCES AND APPROVALS FACILITATOR

Mineral blocks of non-minor minerals are being put up for auction by the states for mining or prospecting for mining, depending on their level of exploration. The grant process is to be completely transparent through competitive bidding on an e-auction portal. An inter-ministerial group, the Post Auction Mining Clearances and Approvals Facilitator ("PAMCAF") has been constituted, which will expedite the requisite clearances to enable the early start of mining activity.

REGULATORY AUTHORTIES

The Ministry of Mines ("MOM") is responsible for the survey and exploration of all minerals (other than coal, natural gases and petroleum), mining and metallurgy of non-ferrous metals; and administration of the Mines and Minerals (Development and Regulation) Act.

The Geological Survey of India ("GSI") is attached to the Ministry of Mines (MoM) for creating and updating national geo-scientific data and mineral resource assessments.

The Indian Bureau of Mines ("IBM") is subordinate to the Ministry of Mines and is mainly responsible for regulating, and ensuring the systematic development of mining in India. It is engaged in the promotion, conservation and scientific development of mineral resources while ensuring the protection of the environment.

The Ministry of Environment, Forest and Climate change (MoEFCC) is responsible for the planning and implementation of India's environmental and forestry policies and programmes. A project proponent must obtain environmental clearance from the MoEFCC to undertake a mining project in India.





LEGAL COMPLIANCE

The Mines and Minerals (Regulation and Development) Act (1957) is an Act of the Parliament of India enacted to regulate the mining sector in India. It was amended in 2015 and 2016. This act forms the basic framework of mining regulation in India.

This act is applicable to all minerals except minor minerals and atomic minerals. It details the process and conditions for acquiring a mining or prospecting licence in India. Mining minor minerals comes under the purview of state governments, like river sand, etc. Prior permission is needed from the Ministry of Environment and Forests for mining and prospecting on forest land.

Activities regulated by the Mines and Minerals (Regulation and Development) Act 1957 are as follows:

- removal of restrictions on the end-use of minerals;
- sale of minerals by captive mines;
- auction by the central government;
- transfer of statutory clearances;
- non-exclusive reconnaissance permit;
- allocation of mines;
- rights of certain existing concession holders and
- extension of leases to government companies

Environment laws mining sector has to comply with are as follows:

- Solid Waste Management Rule 2016;
- Mineral Conservation and Development Regulations (Mineral Conservation and Development Regulations);
- Mineral Conservation and Development Regulations (Mineral Conservation and Development Regulations) and
- Offshore Areas Mineral (Development and Regulation) Act 2002 (OAMDR Act) & Offshore Areas Mineral Concession Rules 2006 (OAMDR rules).



The MMDR Act sets out the legal framework for the mining sector (other than petroleum and natural gas), along with the following rules and regulations:

Mineral Concession Rules 1960 (MC Rules): These rules outline the framework for, among other things, granting concessions, rejecting applications, maintaining accounts, and submitting reports to the state governments.

Mineral Conservation and Development Rules 2017 (MCD Rules): These rules prescribe the conditions for ensuring that mining is undertaken on a scientific basis while conserving the environment.

Mineral (Auction) Rules 2015 (Auction Rules): These rules provide the framework for granting concessions for major minerals through an online electronic auction process.

Mines Rules: These rules lay down the framework for ensuring the welfare, health, and safety of labourers employed in mines.

Offshore Areas Mineral (Development and Regulation) Act 2002 (OAMDR Act): This Act regulates the development of mineral resources in offshore areas, including territorial waters, the continental shelf, exclusive economic zones, and other Indian maritime zones.

Mines and Minerals (Contribution to District Mineral Foundation) Rules 2015: These rules specify the amount to be paid by the holder of a mining lease or prospecting license, or mining lease to the relevant district mineral foundation.

Coal Block Allocation Rules 2017 (Coal Block Allocation Rules): These rules prescribe the terms and conditions for the auction by competitive bidding for the allotment of coal blocks.

**COAL BLOCK
ALLOCATION RULES
2017 (COAL BLOCK
ALLOCATION RULES)**

The central government may specify the maximum number of coal blocks, amount of coal reserves, or both that a company or corporation may be allocated. Under the provisions of the Coal Mines (Special Provisions) Rules, 2014, the nominated authority may specify the maximum number of mines, coal reserves, or both that may be allocated to a company.

**MINERALS (EVIDENCE
OF MINERAL
CONTENTS) SECOND
AMENDMENT RULES,
2021:**

It will enable any person (who is intending to participate in the auction) to propose suitable blocks for auction for a composite license where the mineral potentiality of the blocks has been identified based on the available geoscience data. A committee constituted by the state government shall assess the mineral potentiality of the blocks so proposed and recommend the block for auction.

**THE ENVIRONMENT
PROTECTION ACT
(EPA), 1986 (AMENDED
IN 2006) AND THE
FOREST
(CONSERVATION) ACT,
1980.**

These are aimed at monitoring mining activities for the protection of the environment during all the phases of a mineral resource extraction cycle, including planning, production, and closure.

**MINERAL (AUCTION)
FOURTH
AMENDMENT RULES,
2021:**

It would provide that if any person's blocks are notified for auction, that person would be given the incentive of depositing only half of the bid security amount in the auction of his blocks.

TAX REGIME



The mineral sector in India is the most taxed among all countries, with an effective tax rate between 60% and 64%, surpassing all other mining territories.

Income tax

The mining companies must pay 30% corporate income tax or the minimum alternate tax of 18.5%, whichever is greater (Income Tax Act 1961). The tax rate is topped up with applicable surcharges and cess. A concession tax of 25.17% (inclusive of surcharge and cess) may apply where the entity foregoes specified deductions and exemptions.

An Indian entity can claim a deduction of one-tenth of the revenue expenditure incurred in the year of commencement of commercial production and for four prior years for operations relating to prospecting or the extraction or production of minerals. This deduction can be claimed for a period of ten years, beginning with the year in which commercial production starts. It is limited to the extent of income in each of the respective years.

A seller of coal, lignite, or iron ore must also collect tax at 1% of the consideration received and deposit this with the government. For the sale of other minerals, tax must be collected at 0.1% of the consideration received, where the seller's turnover is in excess of INR 5 million. If the buyer does not provide a permanent account number to the seller, tax must be collected at 5% instead of 1% and at 1% instead of 0.1%.

Goods and services tax (GST)

GST at 18% is payable on royalties paid to state governments for the grant of mining leases. It is payable by the lessee under a reverse charge mechanism. GST paid under the reverse charge mechanism is eligible as an input tax credit (ITC) in the hands of the lessee.

Every person whose aggregate turnover exceeds INR 2 million in the preceding financial year must obtain GST registration. However, small mining leaseholders whose aggregate turnover does not exceed INR 15 million in the preceding financial year are eligible to pay GST under the composition scheme.

Royalties

Holders of a mining lease must pay royalties to the relevant state government for any mineral removed from the leased area or consumed by them or their managers, employees, contractors, or sub-lessees, at the rate specified in Schedule 2 of the Mines and Minerals (Development and Regulation) Act.

Dead rent

A holder of a mining lease must pay dead rent every year to the relevant state government, at a rate specified in Schedule 3 of the MMDR Act. If mining lease holders become liable to pay royalties for the removal or consumption of any mineral, they are liable to pay either the prescribed royalty or the dead rent, whichever is higher.

National Mineral Exploration Trust

It is a non-profit organisation established by the central government for the purpose of receiving funds for regional and detailed exploration activities. A holder of a mining lease or a composite prospecting and mining lease must pay the National Mineral Exploration Trust a sum equivalent to 2% of the royalties paid under Schedule 2 of the Mines and Minerals (Development and Regulation) Act.



DISPUTE RESOLUTION

The existence of mining companies often leads to conflicts with the community around mining activities because of the non-compliance of policies issued by the government. The types of disputes that occur in the implementation of mining activities are:

- dispute between indigenous people and threshold companies;
- environmental pollution dispute;
- land rights dispute;
- stock divestment dispute;
- a programme called Community Development and
- territorial disputes over contracts for work and labour disputes

The effective settlement of disputes is the dream of every party involved in a business activity. Therefore, the parties to the dispute are always trying to find a way of settling the dispute in order to always achieve equilibrium and to survive. There are basically two ways of dispute settlement, namely:

Dispute resolution through the court, which is a pattern of dispute resolution that occurs between the parties who dispute, where the settlement of the dispute is resolved by the court and the decision is binding and;

ADR (Alternative Dispute Resolution) or Alternative Dispute Resolution (APS) is a set of procedures or mechanisms that function to provide an alternative or choice of a method of dispute resolution in the form of APS or arbitration in order to obtain a final decision and bind the parties.

HOW WE CAN HELP?



- Our team provide comprehensive legal services to domestic and international companies that engage themselves in finance, explore in mine, process or sell minerals.
- We have the experience to assist clients in the drafting and negotiation of mining joint ventures, land and mineral leases, royalty agreements and other business agreements.
- We also advise clients with regard to the transfer, sale or acquisition of mining properties, processing facilities, guidance on financing projects as well as advice respecting general corporate and taxation issues and the optimal way of structuring their operations.
- Whether it be financing, real estate acquisitions, exploration agreements, environmental permissions, compliance and diligence, liaisoning with the government authorities, we help in every sphere.

SERVING CLIENTS WORLDWIDE



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Key Contact



Surendra Singh Chandrawat
Managing Partner

✉ surendra@chandrawatpartners.com

Connect Surendra on

[LinkedIn](#)

[WhatsApp](#)

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