BEFORE THE HON'BLE DIRECTOR OF MINES & GEOLOGY
GOVERNMENT OF ANDHRA PRADESH: AT HYDERABAD

APPEAL NO. OF 2011

Between:

M/s. Alpine Estates, Rep. by its
Managing Partner Sri Soham Modi
5-4-187/3 & 4, 3rd Floor, Soham Mansion,
M.G. Road, Secunderabad – 03 ..Petitioner

A N D

Assistant Director of Mines & Geology,
Hyderabad. …Respondent

APPEAL FILED UNDER RULE 35 OF A.P. MINOR MINERAL CONCESSION RULES 1966 AGAINST THE DEMAND NOTICE NO.011/VG-CS/2008, DATED 15-07-2011

1. It is submitted that M/s. Alpine Estates is the sister concern of M/s. Modi Properties and Investment Pvt Ltd, Developer of Project Venture "Mayflower Heights". Demand Notice is issued in the name of Modi Properties and Investments Pvt Ltd. M/s. Modi Properties and Investment Pvt Ltd is not involved in the development of project and it is the Alpine Estates which had undertaken the work of venture of "Mayflower Heights". Hence, it is the Alpine Estates which had undertaken the development of venture "Mayflower Heights". Hence, Alpine Estates had submitted explanation to the show cause notice issued in the name of Modi Properties and Investment Pvt Ltd. Hence, present appeal is preferred by Alpine Estates, questioning the demand notice.

2. It is submitted that Mayflower Heights is a venture taken up by the Petitioner, situated at Sy.No.1/1, 2/1/1 and 191 of Mallapur village, Hyderabad-076. Assistant Director of Mines and Geology (Vigilance) had visited the site along with his staff and had issued show cause notice No.2278/SVS/2008, dated 22-09-2008 in the name of M/s.Modi Properties and Investment Pvt Ltd as follows:

S.No.	Name of the metal	Differential Quantity	Normal Seigniorage fee (in Rs)	5-times penalty (in Rs)	Total (in Rs)
1	Metal	3695.0 Cbm	166275	831375	997650
2	Sand	3694.0 Cbm	132984	664920	797904
3	Bricks	649000 Nos	3500		3500
TOTAL			302759	1496295	1799054

Hence to submit explanation.

3. It is submitted that Petitioner has submitted explanation on 31.10.2008 that they have already submitted explanation in pursuant to the show cause notice dated 22-09-2008 that the entire project construction is of RCC work undertaken by using Ready mix Concrete from the registered, reputed firms like 1) RMC Ready mix (India) Pvt Ltd, 2) Grasim Industries Ltd, 3) M/s.IJM Concrete Projects Pvt Ltd, total ready mix concrete consumed in the work is 4622.50 Cbm and bills and delivery challans were enclosed that material supplied has suffered seigniorage fee.

4.

EXPLANATION FROM 31-10-2008

M/s.Modi Properties & Investments Pvt. Limited is not involved in the development of the project, which you have given a notice to. However, Alpine Estates which is the sister concern of Modi Properties and Investments private Limited is the developer of the project Mayflower Heights. Hence, on behalf of the Alpine Estates, this application is submitted which may be taken on file.

Mayflower Heights referred to in your notice is situated in Sy.Nos.1/1, 2/1/1 & 191 of Mallapur village, Hyderabad-076. Alpine Estates were in receipt of notice issued by the Assistant Director of Mines and Geology (Vigilance) dated 28-03-2008 that to furnish the details of minor minerals that is RMC, metal, sand and clay bricks used in the construction works along with the documentary evidence of having paid the seigniorage fee as follows:

(i) Metal 3965 M3
(ii) River Sand 3694 M3
(iii) Clay bricks 6.49 lakh Nos.

On receipt of the notice, a reply was furnished that the entire project construction is of RCC work undertaken by using ready mix concrete from the registered, reputed firms like (i) RMC Readymix (India) Ltd, (ii) Grasim Industries Limited, (iii) IJM Concrete Products Pvt. Ltd and that the statement of total ready mix concrete consumed in the project is 4622.50 Cbm and for the said supply, bills and delivery challans were enclosed. We have been informed by the said companies that the material supplied has suffered seigniorage fee.

There is no usage of bricks as stated by you, solid cement bricks are prepared by us at our site with our own machinery. The said cement bricks are used for construction. Production of said blocks involves using of waste material like debris from construction and stone dust.

The total quantity of sand used up to that date is 1362 Cbs and the entire way bills for purchase of sand are enclosed. Likewise, a small quantity of metal is used for columns, chajjes and lentils for which the total consumption of 20 MM metal was 317 M3 and the way bills were enclosed. And these were our utilization for the work done till the date of their inspection. It was also further informed that if requested/asked for, we will provide detailed calculation along with structural work and working of drawings to estimate the bill of quantities.

It is unfortunate in spite of production of the detailed documentary evidence of proof of payment of seigniorage fee by way of way bills, purchase orders and delivery challans, without verifying the same and dropping the proceedings, a show cause notice is received from your office. In this regard, we submit that your show cause notice is silent as regards to arrival of the quantities of minerals and its basis. We have submitted in our reply to the Vigilance Department as regards to the area of construction and the utilization of minerals. There is no other utilization except the details furnished, nor you could trace in our records either purchase of such minerals beyond those produced by us to you. When once the bills, way bills, purchase orders and delivery challans are produced, they are sufficient proof of payment of seigniorage fee. We have also disclosed the details of supplies of the companies from whom we have received the minerals. It is your duty in case of doubt to clarify with the said companies by issuing a notice to them. We have been informed by all our suppliers, list of whom is annexed to this application, that the material supplied to us has sufficient payment of seigniorage fee.

We once again reiterate our submissions as regard to the completion of works as follows:

a. We have enclosed along with this explanation detailed estimate of the total quantity of minerals, consumed at site for the RCC works done at site. Working drawings and structural plans for 'B' block south wing are also enclosed on your verification. We are willing to provide plans for all the blocks if called for.

b. We have casted all footings and slabs using ready mix concrete, Columns were casted by concrete mixed at site (site mix). The total estimate of concrete required using RMC is 4214 Cbm. At the time of issuing the notice (a) RCC work of B block south wing was completed (b) Footings and 2 slabs of east wing was completed (c) Footing and 1 slab of west wing was completed (d) Footing and 2 slabs, C block of south wing was completed and (e) Footings and 4 slabs of clubhouse were completed. Therefore, the quantity of concrete consumed is 4214 Cbm which very well corresponds to the ready-mix, concrete purchased (4622 M3), the details of which have been provided to you.

c. The estimated quantity of site mix concrete for the work completed is 316 M3. The quantity of metal consumed for 316 M3 of site mix concrete is 253 M3 (80% of CC) which corresponds to the details of 317 M3 purchased and the details of which have been provided to you. Sand consumed to produce 316 M3 of the site mix concrete is 126 M3 (40% of CC).

d. We are using solid cement blocks purchased by using waste material like debris from construction and stone dust. Therefore, no seigniorage fee is payable for the same.

e. The consumption of mortar for brick work using cement block of size 16″ x 8″ x 4″ (or 6″) is substantially lower than the consumption of mortar using table bricks of size 9″ x 4″ x 3″. The estimate of mortar required for 4″ and 6″ walls using solid cement blocks is 1.4 and 2.1 cubic meters for every 100 M3 of wall respectively. The consumption of mortar for 2 coats of plastering is 1.9 M3 per 100 M2 of plastering. We can provide detailed calculation upon request.

f. Accordingly, as per our estimate, the total consumption of sand for the entire project for brick work and plastering is 4000 M3. At the time of your notice, about 25% of the brick work and plastering was completed corresponding to consumption of 1000 M3 of sand. Therefore, the total consumption of sand for brick work, plastering and the mix concrete is 1000 + 126 = 1126 M3 of sand which corresponds to the sand purchased (1362 M3) and the details of which have been submitted to you.

We are holding all the way bills showing the proof of payment of seigniorage fee. Please provide us an opportunity of personal hearing for demonstrating the same. We have already enclosed and furnished the details to the Assistant Director, Vigilance in pursuance to their notice by our representative dated 21.04.2008.

We also request you to issue notices to companies referred to, for providing the proof of payment of seigniorage fee to the extent of supplies to our project. They have assured us that the material supplied by them has suffered the seigniorage fee. We are in receipt of ready mix concrete which is finished product. The ready mix concrete is not a mineral, as such we cannot demand for production of way bills. It is the respective companies who have purchased the minerals needed for manufacturing ready mix concrete which hold all the seigniorage way bills. Hence, we have not purchased minerals, as such it is only a purchase of ready mix concrete which does not attract the provisions of either Mines & Minerals (Regulation & Development) Act 1957 or APMMC Rules 1966.

As we are not purchasers of any mineral or either quarry owners or indulged in buying or selling of any mineral, Rule 26 (iii) (ii) of A.P. Mines and Mineral Concession Rules 1966 is not attracted. Further, the full bench of the Hon'ble High Court in the case of L.Venkateswar Rao and others Vs. M/s.Singareni Collieries Limited held that "production of bill by user or consumer from a lessee on quarrying or a authorized dealer be considered to be sufficient production". Hence, the bills we have produced are from the authorized dealers and are the sufficient proof. We have not indulged in any illegal utilization of minerals nor indulged in buying and selling of any minerals.

Hence, it is requested that you receive the documents and drop proceedings in the interest of justice".

4. In spite of submission of detailed explanation, Petitioner is served with Demand Notice as follows:

"Through references 1st cited M/s.Modi Properties and Investment Pvt. Ltd was issued show cause notice under Rule 26 (3) (ii) of A.P. Minor Mineral Concession Rules 1966 with a request to produce documentary evidence towards payment of seigniorage fee for the minor minerals procured and consumed in the construction of the venture 'Mayflower Heights'' located Mallapur, Nacharam, Hyderabad. Further, the Assistant Director of Mines and Geology, Hyderabad vide reference 2nd cited issued show cause notice to M/s.Modi Properties & Investments Pvt Ltd to show cause as to why action should not be taken for collection of seigniorage with 5 times penalty towards consumption of minor minerals in the subject area.

In reply to the above show cause notice, vide reference 3rd cited M/s. Alpine Projects Ltd on behalf of M/s. Modi Properties Ltd submitted 64 invoices for ready mix concrete in original for a quantity of 4303 Cbm of ready mix concrete utilized in their construction supplied by M/s.RMC Readymix (India) Pvt Ltd, M/s.IJM Concrete Products Pvt Ltd and M/s. Grasim Industries Ltd. The quantity of minor mineral involved in the said quantity of ready mix concrete were considered. The firm also submitted 51 transit passes / transit forms for a quantity of (288.66) M3 metal. After due verification of said bills by the Assistant Director of Mines and Geology, concerned out of 51 transit passes/ transit forms, only 41 transit passes/transit forms for a quantity of 232.06 were found to be genuine and the remaining 10 transit passes/transit forms were not considered as the date and name of the consignee on the bills were not tallied with the office records. The details are as under:

S. No.	Mineral	Total Qty consumed by M/s.Modi Properties	Qty Covered by RMC			Qty Covered by the tp's produced by M/s. Modi	Total	Diff. Qty
			M/s.RMC Readymix	M/s.IJM Concrete	M/s. Grasim Ind			
1	Metal	3965	2968.725	735.536	844.56	232.06	4780.881	0
2	Sand	3694	2152.725	477.266	422.28	0	3052.271	642
3	Bricks	649000	0	0	0	0	0	649000

Therefore, M/s. Modi Properties and Investments Pvt Ltd is liable for necessary action under Rule 26 (3) (ii) of A.P. Minor Mineral Concession Rules 1966 for the differential quantities of minor minerals procured and consumed, the details of the normal seigniorage fee along with 5 times penalty are as under:

S.No.	Mineral	Quantity	Rates of Seign.fee	NSF	(5) times penalty	Total
1.	Sand	642 M3	40	25680	128400	154080
2.	Bricks	649000 Nos	3850	3850	0	3850
	TOTAL			29530	128400	157930

In view of the above circumstances, M/s. Modi Properties and Investments Pvt Ltd is hereby directed to pay amount of Rs.1,57,930/- under the following head of account towards evaded normal seigniorage fee together with penalty under Rule 26 (3) (ii) of A.P. Minor Mineral Concession Rules 1966 towards the quantities of minor minerals procured and utilized in the civil construction. The original challans shall reach this office within 15 days from the date of receipt of this notice, failing which action will be initiated for recovery of the same under the provisions of Revenue Recovery Act without any further notice. Hence, the present appeal.

GROUNDS

A. Demand Notice raised is arbitrary, illegal, unjust and contrary to the probabilities of the case

B. Assistant Director of Mines and Geology has not applied his mind and has just vaguely issued demand notice that 41 transit passes/transit forms were found to be genuine and the remaining 10 transit passes were not considered as the date and name of the consignee on the bills did not tally.

C. Assistant Director of Mines and Geology failed to consider that Petitioner had furnished the entire list as regards to the supply of road metal. The entire material is supplied by M/s.Sai Vishal Enterprises. Notice if any shall be issued to the said supplier.

D. Demand Notice does not speak of which of the ten transit passes/ transit forms are not considered out of 51 transit passes/transit forms. Assistant Director of Mines and Geology should have listed the same in his demand notice and ought to have issued notice to the supplier i.e. Sai Vishal Enterprises.

E. Assistant Director of Mines and Geology failed to consider that Petitioner has given statement of utilization of sand and its suppliers for a quantity of 1362 Cbm in 147 way bills. Hence, entire sand utilized by the Petitioner has suffered seigniorage fee.

F. Assistant Director of Mines and Geology cannot calculate utilization of minor minerals for manufacture of RMC which is a finished product and entire evidence of purchase of RMC has been produced by the Petitioner. If any quantity difference, a notice shall be issued to RMC supplier, Petitioner cannot be asked for proof of payment of seigniorage fee for material used information of finished product. It shall be only by the manufacturer. The demand notice issued reads that Petitioner has failed to produce the waybills for sand for 642 Cbm whereas Petitioner has produced way bills of 1362 Cbm. Assistant Director of Mines and Geology has not explained why it is not being considered. Demand Notice is silent with this aspect.

G. Bricks are prepared by the Petitioner themselves out of the left over debris of the minerals utilized, hence there cannot be any imposition of seigniorage fee on the bricks.

H. Assistant Director of Mines and Geology ought to have considered the entire material placed by the Petitioner without raising a demand notice in a routine manner, wherein Petitioner is not liable to pay any seigniorage fee.

I. There is no basis played for the assessment to arrive at the utilization of minerals. It is only on an assumption the demand notice is raised. Petitioner is not a lessee nor he has indulged in selling and buying of any minerals to attract Rule 26 (iii) (ii) of A.P. Minor Mineral Concession Rules 1966.

J. Petitioner had produced the entire records as regards to the utilization, same should have been considered as the Full Bench of Hon'ble High Court of AP in the case of L.Venkateswara Rao and others Vs.M/s.Singareni Colleries has held that production of bill by user or consumer from a lessee or an authorized dealer be considered to be sufficient proof.

K. Petitioner in fact has produced all the documentation, Assistant Director of Mines and Geology should have considered the same.

Other grounds if any it will be urged at the time of hearing.

It is, therefore, prayed that the Hon'ble Appellate Authority may be pleased to call for the records in the Demand Notice No.011/VG-CS/2008, dated 15-07-2011 and set aside the same in the interest of justice.

It is further prayed that the Hon'ble Appellate Authority may be pleased to grant interim stay of operation of Demand Notice No. 011/VG-CS/2008, dated 15-07-2011, pending disposal of the appeal in the interest of justice.

HYDERABAD

DT.07-08-2011 COUNSEL FOR PETITIONER