

CHAPTER-II

GRANT OF MINERAL CONCESSION

Summary

As per Sustainable Sand Mining Management Guidelines, 2016, sand mining would not be undertaken near bridges. However, audit observed four instances wherein mining leases were allotted near bridges. The amount of security deposit and first instalment of royalty paid by 84 successful bidders were deposited in Government Account with delay. The Department failed to forfeit security amount and first instalment of royalty for delay in execution of 43 lease deeds. It was noticed that 54 lessees did not submit/short submitted financial assurance required against the cost of reclamation and rehabilitation. The Department could not ensure that 613 stone crusher units operate only after taking storage license. Determination of proved reserve and total reserve plus resource in mining plan was not done properly before approval of mining plan in one case.

2.1 Introduction

Under Section 15 of the MMDR Act, 1957, State Government has been empowered to make Rules for grant of mineral concession for minor minerals. Accordingly, Government of Uttar Pradesh (GoUP), framed the Uttar Pradesh Minor Mineral (Concession) Rules (the UPMMC Rules), 1963. At present mineral concession in the State is granted through e-tender cum e-auction system for long term mining leases and mining permit system for short term¹⁰ leases.

Any mineral concession in the form of a mining lease would be settled as per the procedure laid in Rule 27 of the UPMMC Rules, 1963 (as amended time to time). The successful bidders after receiving Letter of Intent (LoI) shall produce approved mining plan and environment clearance (EC) certificate according to Rule 29 of said Rules. Where a mineral concession is granted under the Rules, the lease deed shall be executed in prescribed form within one month of granting EC. The executed lease deed will be registered within three months' period. If the person to whom such mineral concession has been granted fails to submit the required documents for execution/registration within the aforesaid period, the District Magistrate shall, subsequent to cancelling the LoI, forfeit the first instalment of royalty and security money deposited in favour of the State Government.

Audit scrutinised records of the selected offices and DGM and the irregularities noticed during the Audit are discussed in the succeeding paragraphs.

¹⁰ Maximum upto six months

Audit findings

2.2 Allotment of mining leases near bridges

As per Sustainable Sand Mining Management Guidelines (SSMMG), 2016, sand mining would not be undertaken in any area located within 200 to 500 meters from bridges. It also states that the depth of mining shall be restricted to three meter or water level, whichever is less and no in-stream mining shall be allowed. As per National Green Tribunal (NGT), Principal Bench, New Delhi order dated 5 April 2019, State Government is required to follow SSMMG, 2016. Again NGT, vide its order dated 26 February 2021 directed all States/Union Territories to strictly follow the SSMMG, 2016 read with Enforcement and Monitoring Guidelines for Sand Mining (EMGSM), 2020.

After plotting the geo-coordinates of 231 mining leases/permits of 14 districts as shown in Demarcation Report/Environment Clearance (EC) in Google Earth Pro, Audit noticed that four mining leases of sand/ morrum were allotted near bridges in three districts. Details are depicted in **Table-2.1**.

Table 2.1.
Mining leases near bridges

Name of District	Number of mining leases near bridges	Figure Number
Banda	2	2.1 and 2.2
Chitrakoot	1	2.3
Kanpur Dehat	1	2.4

Figures with serial Numbers

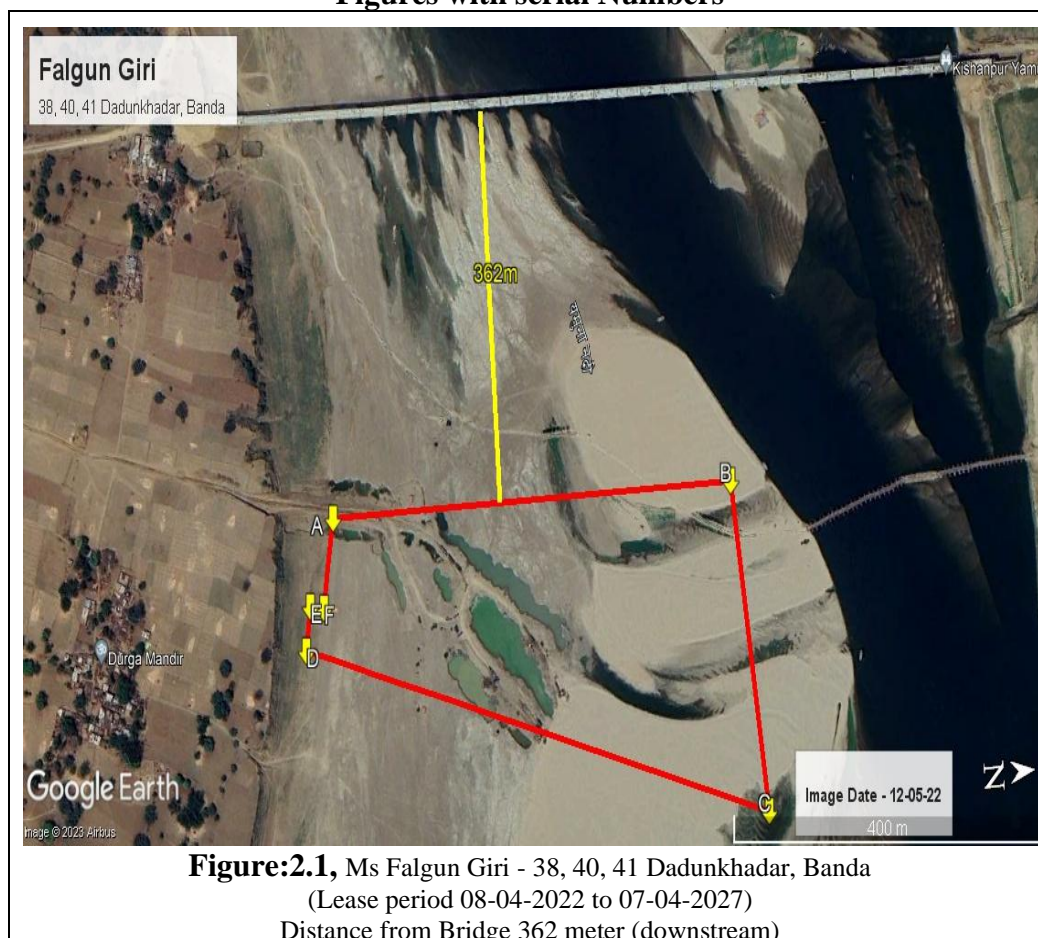




Figure:2.2, Ms Tripathi Contractor, 1130 Achhraud, Banda
(Lease period 01-03-2021 to 28-02-2026)
Distance from Bridge 254 meter (downstream)



Figure:2.3, DFCCIL, 190/2 Lamiyari, Chitrakoot (Lease period 23-10-2017 to 07-11-2019)
The Lease is under bridge (part of the State Highway 92)

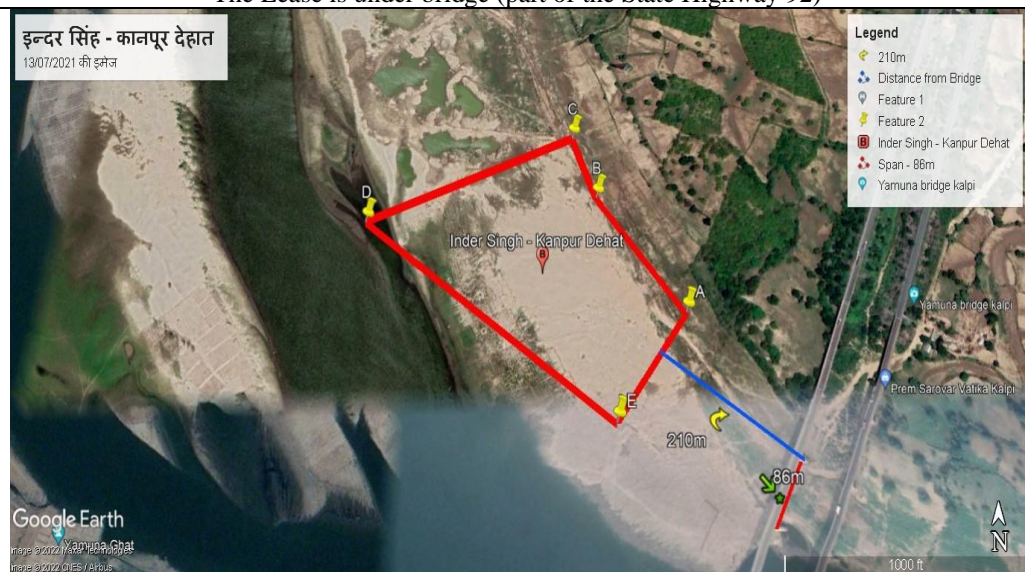


Figure:2.4, Inder Singh – Kha-01 Daulatpur Kachhar, Kanpur Dehat (Lease period 06-12-2021 to 05-12-2026) Distance from Bridge (part of the National Highway 27)– 210 meter

It was clearly evident in above images that leases were awarded near bridges in violation of SSMMG, 2016.

Awarding leases near the important structures may undermine bridge supports by degrading the soil profile below the structure hence reducing its life span.

The Government, in exit conference, stated that works of bridges and national highways on rivers started after execution of lease deeds. However, Government assured to take suitable action after examining the matter in above cases. The reply is not acceptable as mining leases near bridges were allotted after construction of bridges.

Recommendation 1:

The Government may ensure compliance of Sustainable Sand Mining Management Guidelines and not award leases near bridges.

2.3 Approval of incorrect Geo-coordinates

After plotting the geo-coordinates of 231 mining permits/leases of 14 districts as shown in Mining Plan/Environment Clearance (EC) on Google Earth Pro, Audit noticed that areas of two sand permits in JP Nagar district and areas of two mining leases in Hamirpur district were not correct as area of both the permits/leases overlapped each other, as shown in following Figures. Further, the GIS Cell of MNNIT Allahabad, Prayagraj also affirmed the above deficiencies in Hamirpur district.

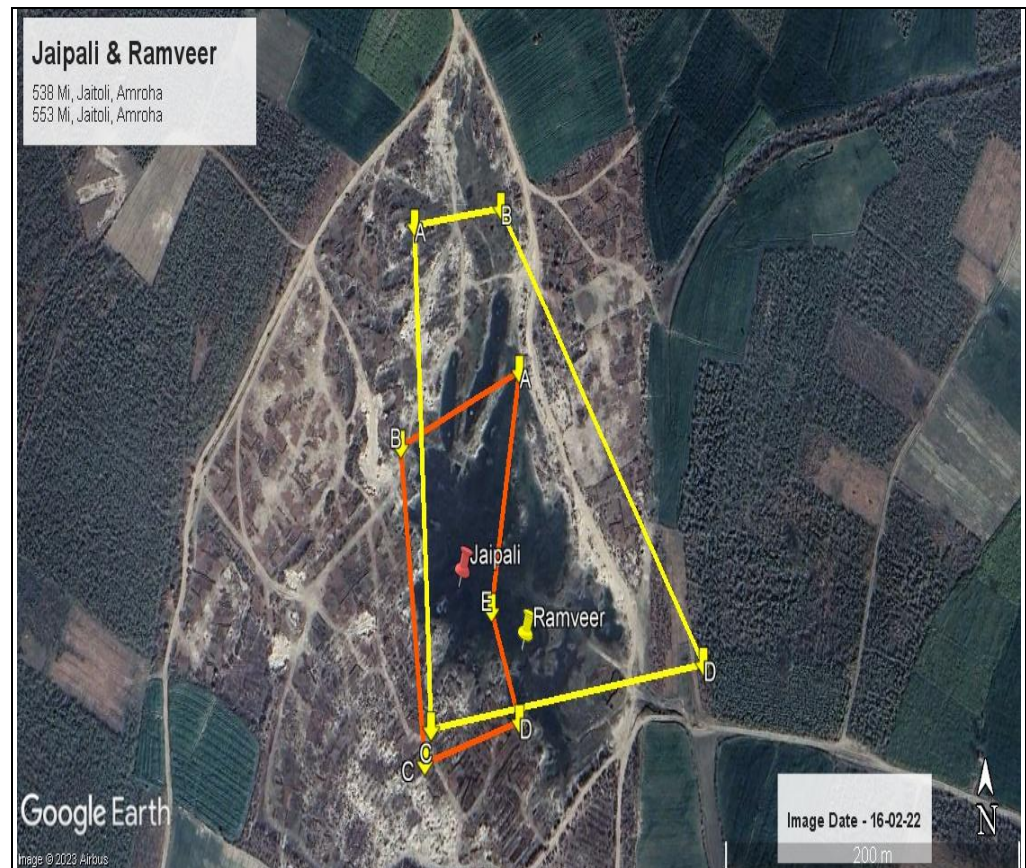


Figure:2.5- Overlapping of the permit coordinate found in JP Nagar for the two running permits in Google Earth Imagery

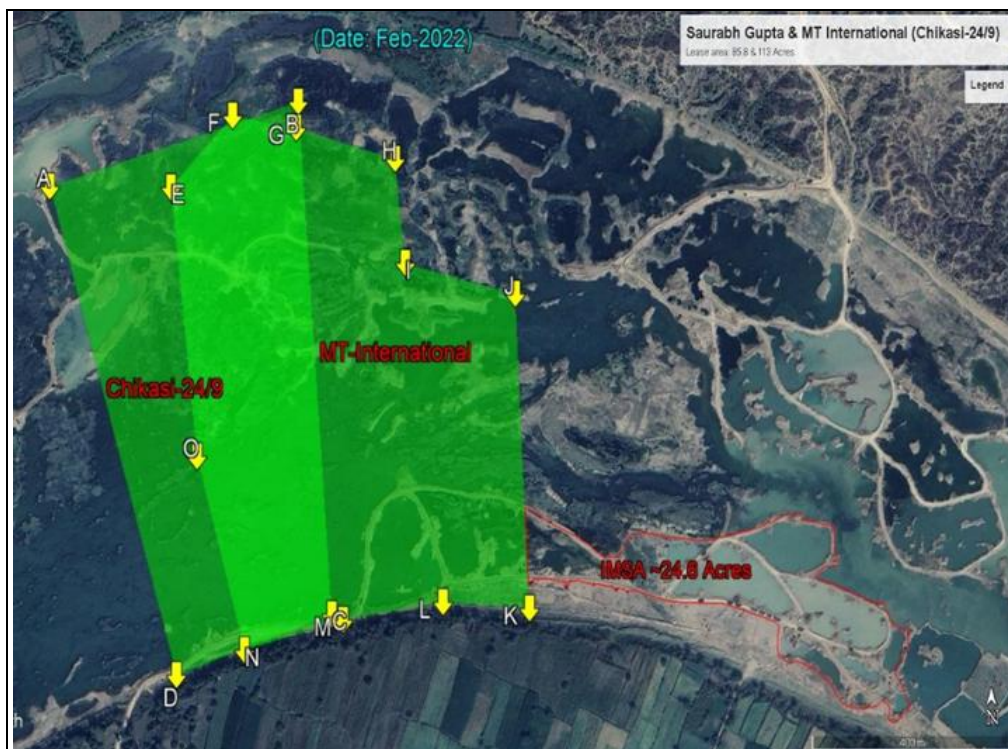


Figure:2.6- Google Earth Imagery shows the overlapping of the leases in Hamirpur

Audit further noticed that the *gata* number of both the permits/leases were different and overlapping of permits/leases indicates that either a thorough field survey could not be conducted by Mining Officer or geo-coordinates of the permits/leases could not be ascertained properly in the field survey.

The Government, in exit conference, stated that all permits are of private persons and while making mining plan registered qualified practitioners make the plan by taking coordinates at their level. Nevertheless, such type of cases will be examined and action will be taken. The fact remains that these leases were awarded without conducting proper field survey.

2.4 Boundary pillars not maintained properly

Rule 35 of the UPMMC Rules, 1963 stipulates that the lessee shall erect and at all times maintain and keep in good repair boundary marks and pillars necessary to indicate the demarcation. As per SSMMG, 2016, Mining should begin only after pucca pillar marking the boundary of lease area.

During field visit of three leases of sand/morrum/gitti of Hamirpur and Prayagraj (Tehsil Sarila in Hamirpur and tehsil Bara in Prayagraj was selected for field visit out of 18 districts) by consultant in the presence of officials of the Department, it was found that boundary pillars were not erected properly. Either there was no pillar or broken pillar or not a permanent structure. The only one of the permanent pillars at lease area of Aman Brick Field at Bara, Prayagraj was found 80 meter away from its actual boundary location. Following figures shows the status:



Figure:2.7- Field visit at Bhedi Kharka, Sarila, Hamirpur



Figure:2.8- Broken Pillar that was found near A.J. Construction, Bhedi Kharka, Sarila, Hamirpur



Figure:2.9- Permanent boundary Pillars were not found during physical verification of Sarita Construction, Bara, Prayagraj.



Figure:2.10- The only one permanent Pillar at Aman Brick Field at Bara found 80 meter away from its actual location

To avoid illegal and unscientific mining in lease area boundary pillar should be erected properly. Without having a properly installed pillar it is not possible to monitor illegal mining activities. Concerned DMOs failed to ensure proper demarcation of the lease area.

The Government, in exit conference, stated that continuous investigation is done in the districts, if irregularities found necessary action is taken. Reply of the Department is not acceptable as boundary pillars were not found properly erected during physical verification of these lease areas.

2.5 Delayed deposit of security deposit and first instalment of royalty into Government Account

The system of e-auction/e-tender/e-tender cum e-auction has been implemented by the Government of Uttar Pradesh from August 2017 for allotment of leases of minor minerals in the state. Every bidder/tenderer willing to participate in the auction shall deposit such amount as Earnest Money as may be prescribed in the notice. The earnest money will be refunded to the remaining bidders/tenderers except the successful bidders/tenderers. GoUP order¹¹ dated 14 August 2017 stipulates that every successful bidder of lease for minor minerals, after receiving LoI, shall deposit 50 *per cent* of the first year's royalty due (25 *per cent* as security deposit and 25 *per cent* as first instalment) on the e-payment gateway of Metal Scrap Trade Corporation (MSTC)¹² through RTGS/NEFT within two working days from the date of

¹¹ Para 19(2).

¹² Service provider of the Geology and Mining Department for e-auction.

issue of letter of intent (LoI). The pre-bid Earnest Money deposited by the successful bidder/tenderer will be adjusted before depositing the said amount. As per agreement¹³ executed between GoUP and MSTC revenue will be forwarded by MSTC to DGM office vide demand draft/cheque within five working days from date of receipt of LoI at MSTC from concerned district.

According to Rule 21 of Part I of Financial Handbook Vol. 5, all moneys, as defined in Articles 266, 267 and 284 of the Constitution of India, received by or tendered to Government Servants in their official capacity shall, without undue delay, be deposited in the Bank or Treasury wholly and shall be included in Government Account.

Audit test-checked records of 217 leases in 16 DMOs¹⁴ (since no lease has been awarded in district JP Nagar and Muzaffarnagar) and noticed in 84 leases of 10 DMOs¹⁵ that demand draft of amount of pre-bid earnest money, security deposit and first instalment of royalty deposited by the successful bidder at MSTC portal was handed over to DGM by MSTC after lapse of 12 days to 424 days from the date of issue of LoI as detailed in **Appendix-I**.

Further, it was found that DGM sent these demand drafts to concerned DMOs to deposit into treasury under proper head of account and these demand drafts (DDs) were deposited late in the treasury after lapse of 19 days to 441¹⁶ days from the date of issue of LoI. DGM did not ensure the timely deposit of Government revenue in Government account. Further, any clause of penalty for delay on the part of MSTC in forwarding the Government revenue to DGM office was not mentioned in the agreement executed between MSTC and Government.

The Department, in its reply, stated that due to busy work schedule, sometimes there is a delay in receiving the bank draft from the Directorate by the District Officer, due to which it is deposited in the prescribed account head with some delay.

Reply of the Department is not acceptable as MSTC handed over DDs after lapse of 12 days to 424 days from the date of issue of LoI and these DDs were deposited late in the treasury after lapse of 19 days to 441 days from the date of issue of LoI. The Department should examine these cases to ascertain the point at which there was delay.

2.6 Security amount and first instalment of royalty not forfeited for delay in execution of lease deed

As per Rule 34 (5) of the UPMMC Rules, 1963 (47th amendment 2019) lease deed shall be executed by the proponent within a period of one month from the date of grant of EC. If the lease deed is not executed within prescribed period, then the said letter of intent will be cancelled and the security amount and first instalment of royalty will be forfeited by the District Magistrate as per Rule 59(1) of the said Rules.

¹³ 22 October 2019

¹⁴ Where mining leases were granted through e-auction

¹⁵ Banda, Chitrakoot, Fatehpur, GB Nagar, Hamirpur, Kanpur Dehat, Kaushambi, Mahoba, Prayagraj and Sonbhadra.

¹⁶ In this case, LoI was issued on 27.07.2018. However, MSTC forwarded DD dated 24.09.2019 vide letter dated 03.10.2019. It was finally deposited in Government Account on 11.10.2019.

Audit test-checked lease files of 217 leases in 16 DMOs and noticed in nine DMOs¹⁷ that 43 lease deeds were executed with a delay of 4 days to 1,007 days¹⁸ after obtaining EC certificate by the proponent. As these lease deeds were not executed within a period of one month after obtaining EC, security amount and first instalment of royalty of ₹ 104.77 crore was to be forfeited. However, letter of intent was not cancelled and the above amount was not forfeited. Details are shown in **Appendix-II**.

The Department, in its reply (July 2023), stated that as per the provision of Rules 35 (5) of the Uttar Pradesh Minor Mineral (Concession) Rules, 2021 mining lease would be executed within one month from the date of issue of environmental clearance certificate in the favour of the proponent. In the said rule there is no provision for the mining lease to be deemed cancelled and the security amount to be forfeited if the mining lease deed is not executed within the stipulated period.

Reply furnished by the Department is not acceptable because Rule 59 (1) of the UPMMC Rules, 1963 and Rule 60 (1) of the UPMMC Rules, 2021 provide that in case the proponent fails to execute the lease deed within one month of obtaining environment clearance, the letter of intent will be cancelled and the security amount and first instalment of royalty will be forfeited by the District Magistrate.

2.7 Short levy of stamp duty on mining lease deeds

Royalty and contribution payable to DMFT (an amount equivalent to 10 *per cent* of royalty) are consideration paid by lessees for grant of mining leases. Stamp duty and registration fees¹⁹ are leviable on mining lease deeds.

Article 35(b) (i) of Schedule I-B of the Indian Stamp Act, 1899 (IS Act) stipulates that where lease for a term not exceeding thirty years has been granted for a fine or premium, or for money advanced and where no rent is reserved, the stamp duty chargeable should be the same as a conveyance for a consideration equal to the amount or value of such fine or premium or advance as set forth in the lease. Stamp duty on such lease deeds was chargeable at the rate of two/four²⁰ *per cent* of the consideration. In addition, Explanation (I) of Article 35 states that when a lessee undertakes to pay recurring charge, such as the Government revenue, the landlord's share of cess or the owner's share of municipal rates or taxes, which by law, is recoverable from the lessor, the amount so agreed to be paid by the lessee shall be deemed to be part of the rent.

Audit test-checked lease files of 217 mining leases in 16 DMOs²¹ and noticed that in 173 mining lease deeds executed between April 2017 and March 2022 for a period of five to 20 years, only the amount of royalty was included in

¹⁷ Chitrakoot, Fatehpur, GB Nagar, Hamirpur, Mahoba, Prayagraj, Saharanpur, Shamli and Sonebhadra.

¹⁸ Delay upto 180 days, cases 29; delay between 181 to 365 days, cases five and delay more than one year cases nine.

¹⁹ Registration fee of ₹ 20,000 was payable upto 12.02.2020. From 13.02.2020, registration fee at the rate of one *per cent* of consideration amount was payable.

²⁰ In the case of an immovable property situated within a development area.

²¹ Baghpat, Banda, Bulandshahr, Chitrakoot, Fatehpur, GB Nagar, Hamirpur, Kanpur Dehat, Kaushambi, Mahoba, Prayagraj, Saharanpur, Sambhal, Shamli, Siddharthnagar and Sonebhadra

consideration for charging the stamp duty and contribution payable to the DMFT was not included. Consequently, Stamp duty and registration fees of only ₹ 190.59 crore was charged on the consideration of ₹ 6,532.77 crore. However, the stamp duty and registration fees of ₹ 211.55 crore should have been charged on the consideration of ₹ 7,186.05 crore. Thus, the Government was deprived of revenue of ₹ 20.96 crore due to short levy of stamp duty and registration fees as shown in **Appendix-III**.

The Department, in exit conference, stated that the amount deposited in the trust is not deposited in the treasury, due to which there is no liability of stamp duty on it.

Reply furnished by the Department is not acceptable as recital of lease deed clearly mentioned that in addition to royalty, contribution to DMFT was also required to be paid. Thus, as per explanation 1 of Article 35 of schedule 1B of IS Act, contribution made to DMFT was also required to be included in consideration value of lease for the purpose of levying stamp duty. Further, in authority for advance ruling of GST, Andhra Pradesh, amount of DMF was considered as consideration.

2.8 Financial assurance not/short collected from lease holders

Financial assurance is required to be furnished by the leaseholder to the competent authority so as to indemnify the authority against reclamation and rehabilitation cost of closure of mine. Rule 34 (6) of the UPMMC Rules, 1963 (as amended in 2017) provides that financial assurance has to be furnished by every lease holder. The amount of financial assurance shall be rupees twenty five thousand for in-situ-rock deposit and rupees fifteen thousand for sand or morrum or bajri or boulder or any of these in mixed state exclusively found in river bed mines, per acres of the mining lease area put to use for mining and allied activities. However, the minimum amount of financial assurance to be furnished in any of the forms referred to in sub-Rule (7) shall be rupees two lacs for each category of mines or respective area.

The financial assurance shall be submitted by the lessee before the execution of the lease deed to the district officer or the officer authorised by the State Government in this behalf, in one of the following forms:

- (a) Letter of credit from any scheduled bank
- (b) Performance or surety bond;
- (c) Any other form of security or any other guarantees acceptable to the competent authority.

Audit test-checked lease files of 217 leases in 16 DMOs and noticed in 14 DMOs²² that the financial assurance amounting to ₹ 3.74 crore was not collected by the concerned DMOs from 54 lessees before the execution of the lease deeds. The Department did not initiate any action to collect the financial assurance from concerned lessees. Further, 11 lessees of Prayagraj district submitted ₹ 23.00 lakh against ₹ 43.58 lakh. Hence ₹ 20.58 lakh was short submitted by lessees. Thus, lessees did not submit/short submit financial assurance of ₹ 3.95 crore. Details are shown in **Appendix-IV**.

The Government, in exit conference, accepted the Audit observation and assured to take necessary action in this regard.

²² Baghat, Banda, Fatehpur, GB Nagar, Hamirpur, Kanpur Dehat, Kaushambi, Mahoba, Prayagraj, Saharanpur, Sambhal, Shamli, Siddharthnagar and Sonbhadra.

Recommendation 2:

The Government may ensure collection of financial assurance from successful bidders before execution of lease deed.

2.9 Stone crusher units operating without Storage licence

Rule 70(2) of the UPMML Rules, 1963 (as amended time to time) provides that no person will transport any mineral in the State without Form MM²³-11 issued under sub Rule (1) and Form²⁴ C issued under Rule 5 (2) of Uttar Pradesh Mineral (Illegal Mining, Transportation and Storage) Rules, 2002 and 2018 or issued by other State Governments. The Government in its order²⁵ dated 9 March 2019 clarified that storage license shall be granted to stone crusher industries and other mineral based industries also. Rule 5(2) of Rules 2018 also provides that applicant shall deposit a non-refundable fee of rupees ten thousand for storage license.

Audit test-checked records of 16 DMOs and noticed in six DMOs that storage licence was not granted to stone crushers. From the list of stone crusher units provided by Uttar Pradesh Pollution Control Board (UPPCB), it was noticed that 1,035 stone crusher units were operational during the period April 2017 to February 2023. Out of which, 708 stone crusher units were granted consent to operate (CTO) from pollution control board. Further, it was observed that 613 stone crushers were operating without taking storage license as required under the provisions of above Rules. Concerned DMOs did not initiate any action to grant the storage license to these stone crusher units. Details are shown in **Table-2.2.**

Table 2.2
Details of Storage license of stone crusher units

Name of District	No. of stone crushers established	No. of stone crusher units to which NOC granted by UPPCB	Storage license granted to stone crushers
Banda	30	9	0
Chitrakoot	119	50	0
Hamirpur	11	1	0
Mahoba	311	202	0
Prayagraj	85	67	0
Saharanpur	95	95	95
Sonebhadra	384	284	0
Total	1035	708	95

The above table shows that only DMO Saharanpur had granted the storage license to stone crushers. Operation of 613 stone crushers without storage license led to loss of fee of ₹ 61.30 lakh as well as encouragement of transportation of minerals illegally.

The Government, in exit conference, accepted Audit observation and assured to grant license to all stone crusher units at earliest.

²³ Transit pass (*Rawanna*) is issued by the holder of the mining lease or permit for transportation of minor mineral. It includes detail of name and address of the lessee and person in-charge of consignment, name and quantity of minerals and vehicle number through which minerals are transported.

²⁴ The holder of licence for storage of minerals shall issue the transit pass in Form C for lawful transportation of minerals from the Store.

²⁵ Vide GO no. 583/86-2019-183/2011 dated 9 March 2019.

2.10 Loss of revenue due to reduction in annual mineable quantity

GoUP, vide its order²⁶ dated 14 August 2017, prescribed the procedure for grant of mineral concession through e-tender cum e-auction system. In its order GoUP clearly mentioned that before participating in e-tender cum e-auction, the bidders should be convinced by inspecting the spot regarding quantity of mineral and the approach road to the mining site etc. After participating in the e-tender cum e-auction, no claim will be accepted in this regard.

Audit test-checked records related to 217 leases in 16 DMOs and noticed in DMO Kanpur Dehat that tenders for e-tender cum e-auction of ordinary sand for Gata No. 58 of village Bilaspur Kachhar of Tehsil Sikandra was invited on 3 December 2018, in which the annual mineable quantity was estimated 3,33,810 cubic meters. The first phase tender was opened from 18 December 2018 to 19 December 2018 and second phase tender on 20 December 2018. On the basis of the highest bid of ₹ 264 per cubic meter, the LoI was issued on 5 February 2019 to M/s Anandeshwar Agro Foods Pvt. Ltd.

It was further noticed that on 8 January 2019 and 14 February 2019, the bidder requested the District Magistrate that availability of sand is only in some part of the area and water is flowing in the rest part, therefore erstwhile notified quantity may be modified by estimating fresh mineable quantity of sand. The District Magistrate directed the Additional District Magistrate (Administration), Sub-Divisional Magistrate/Sikandra and Mines Inspector Kanpur Dehat to inspect the site and submit the investigation report. Based on the report submitted to the District Magistrate, mineable quantity was estimated as 1,10,057 cubic meter per year. District Magistrate Kanpur Dehat, vide letter dated 22 April 2019 requested the DGM to give guidance in relation to reducing the mining area and the estimated quantity on the request of the bidder. In response, the DGM quoted the condition mentioned in above Government Order dated 14 August 2017 and intimated to the District Magistrate on 23 May 2019 that the matter should be decided by taking action at his level. On the basis of the investigation report of the Joint Committee dated 16 March 2019, the annual mineable quantity was fixed as 1,10,057 cubic meters by the District Magistrate. Mineable quantity was reduced by the District Magistrate against the conditions mentioned in the order dated 14 August 2017. Thus, an undue benefit was given to lessee and due to reduction in annual quantity, Government was deprived of huge revenue in form of royalty amounting to ₹ 5.91 crore²⁷ per year.

The Government, in exit conference, stated that difference in the quantity can be due to replenishment²⁸, though matter will be examined. The reply of Government is not acceptable as District Magistrate reduced the annual quantity in violation of Government order dated 14 August 2017.

2.11 Discrepancy in proved reserve indicating risk of illegal mining

According to Rule 34 of the UPMMC Rules, 1963, the mining operations will be carried out as per the mining plan.

²⁶ 1875/86-2017-57(General)/2017 TC-1 dated 14.08.2017

²⁷ $3,33,810 \text{ m}^3 - 1,10,057 \text{ m}^3 = 2,23,753 \text{ m}^3 * ₹ 264 = ₹ 5,90,70,792$

²⁸ Restoration of stock of sand to a former level or condition.

Audit test-checked records of 217 leases in 16 DMOs and noticed in one case in DMO Prayagraj that according to the mining plan approved on 24 July 2015 in favour of Mrs. Nirmal Rani Chawla lessee of silica sand, the quantity of proved reserve was 26,19,548 tonnes and the quantity of total reserve plus resource was 82,79,796 tonnes. A total of 1,13,594.64 tonnes of silica sand was excavated and transported by the lessee between 2015-16 and 2019-20. Further, according to the mining plan dated 15 November 2019 (approved on 10 January 2020), the quantity of proved reserve was reduced to 9,94,770 tonnes and the quantity of total reserve plus resource was reduced to 40,38,274 tonnes. Thus, the quantity of proved reserve decreased by 16,24,778 tonnes and the total reserve plus resource decreased by 42,41,522 tonnes within five years, while only 1,13,594.64 tonnes of silica sand was excavated and transported by the lessee during the said period. This indicated that either determination of proved reserve and total reserve plus resource in mining plan was not done properly before approval of mining plan or risk of illegal extraction of minerals cannot be ruled out. The DGM did not notice this discrepancy while approving the mining plan in later case. This discrepancy needs proper investigation.

The mining plan is to be prepared by technical experts scientifically in such a manner so that it could help in development of mining area. Lessees have to excavate minerals according to reserve mentioned in mining plan. If mining plan was not prepared scientifically, the Department will not have any control over mining and lessee may extract more minerals in an unscientific manner.

The Government, in exit conference, assured that while preparing District Survey Report (DSR) the proved reserve will be determined through scientific techniques.

2.12 Conclusion

Audit noticed instances where mining leases were awarded near bridges. There were delays in depositing the amount of security deposit and first instalment of royalty paid by the successful bidders in Government Account. Security amount and first instalment of royalty was not forfeited for delay in execution of lease deed. Financial assurance was not collected before execution of lease deed. The Department could not follow the Government order for granting of storage license to stone crusher units. These instances indicate that there is scope of improvement in monitoring of mining activities. Discrepancy in Quantity of proved reserve indicated risk of illegal extraction of minerals, which needs proper investigation. Cases of illegal extraction of minerals noticed by audit have been discussed in Chapter IV of this Report.