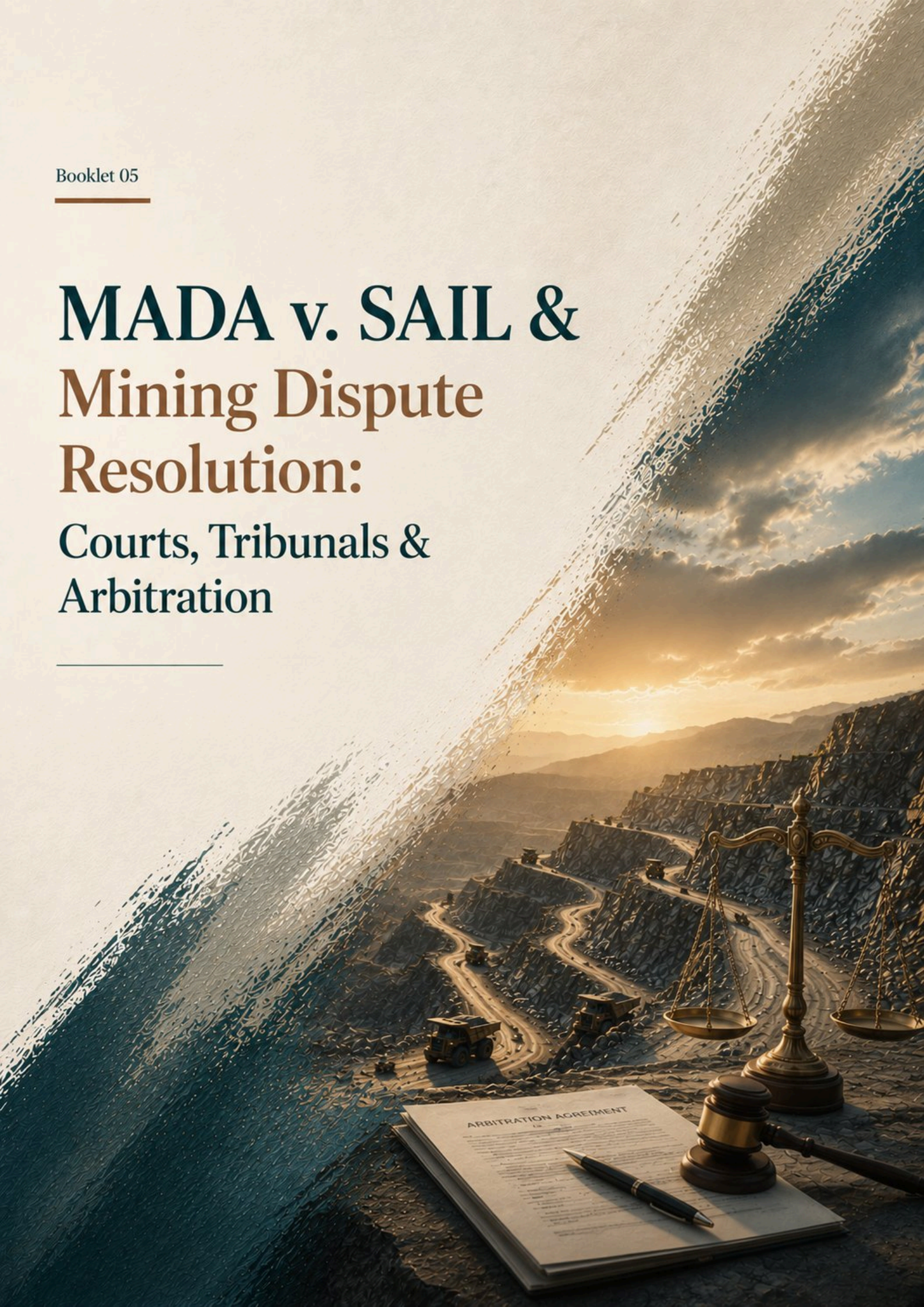


Booklet 05

MADA v. SAIL & Mining Dispute Resolution: Courts, Tribunals & Arbitration



MADA v. SAIL & Mining Dispute Resolution: Courts, Tribunals & Arbitration

Nine-Judge Bench Ruling, Mining Taxation, NGT Jurisdiction, High Court Writs, Arbitration in Mining Concessions and Key Precedents

Booklet V of VI — Indian Mining Sector Legal Series

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CHAPTER ONE

MADA v. SAIL: The Landmark Nine-Judge Bench Ruling

Mineral Area Development Authority v. Steel Authority of India — Constitutional Reinterpretation, State Taxation Power, MADA Framework and Commercial Implications

The Supreme Court's decision in Mineral Area Development Authority and Others v. Steel Authority of India and Others (MADA v. SAIL), pronounced by a nine-judge Constitutional Bench on 25 July 2024, is the most significant constitutional court decision in Indian mining law in three decades. Its reinterpretation of the state-Union balance in mining taxation has fundamental implications for the mining industry, state governments, and the Central Government.

1.1 The Constitutional Question

The central constitutional question before the nine-judge bench in MADA v. SAIL was whether the royalty payable on mineral extraction under the MMDR Act constitutes a "tax" within the meaning of Entry 50 (taxes on mineral rights) of the State List (List II), and — if it does — whether the MMDR Act's specification of royalty rates "occupies the field" under Entry 54 (regulation of mines, List I) in a manner that prevents states from imposing any additional levy

on mineral-bearing land or mineral rights under Entry 49 (taxes on land, List II) or Entry 50 (taxes on mineral rights, List II). The question arose from decades of conflicting state legislation — particularly in Jharkhand, West Bengal, and Odisha — imposing cess and levy on mining operations that the mining industry challenged as unconstitutional levies that exceeded the state's post-MMDR Act legislative competence over mining. The earlier five-judge bench decision in *India Cement v. State of Tamil Nadu* (1990) had characterised royalty as a tax and held that states could not impose cess on mineral rights since Parliament had occupied the field through the MMDR Act's royalty framework. Subsequent decisions had created inconsistencies in the application of *India Cement*, leading to the reference to the nine-judge bench.

The nine-judge bench in *MADA v. SAIL*, by a majority of 8:1 (Justice B.V. Nagarathna dissenting), overruled *India Cement* and held: first, that royalty payable under the MMDR Act is not a tax — it is a contractual payment for the right to extract minerals, analogous to the price paid for a licence, and does not have the character of a compulsory exaction imposed under Parliament's taxing power; second, that the MMDR Act's royalty provisions fall under Entry 54 (regulation of mines) rather than Entry 50 (taxes on mineral rights), and that Parliament's regulation of royalty amounts does not constitute "occupation of the field" under Entry 50 in a way that prevents states from imposing their own taxes on mineral rights under Entry 50 or taxes on land under Entry 49; and third, that states therefore have an independent constitutional power to impose taxes and levies on mineral-bearing land and mineral rights under Entries 49 and 50 of List II, subject to the general constitutional limitations on taxation — non-confiscation, non-discrimination, and the requirement of a law — but without being pre-empted by the MMDR Act's royalty framework.

1.2 Commercial Implications of MADA v. SAIL

The commercial implications of the *MADA v. SAIL* ruling for the mining industry are profound and potentially transformative. By holding that states can independently levy taxes on mineral-bearing land and mineral rights over and above the MMDR Act's royalty, the decision opens the constitutional door for every state with mining operations to impose additional cesses, levies, or taxes on mining — without the constraint of the *India Cement* principle that previously made such state-level mining taxes constitutionally suspect. The mining industry's immediate concern is the aggregate burden of existing and future state mining taxes that may be imposed or validated by the decision: several states (including Jharkhand, Odisha, West Bengal, and Chhattisgarh) had imposed cesses on mineral-bearing land or mineral transport that were challenged as unconstitutional under *India Cement* — the *MADA v. SAIL* ruling potentially validates these state levies and creates liability for the mining industry for past non-payment of cesses that were never collected pending the constitutional outcome.

The Supreme Court's resolution of the retrospective application question in *MADA v. SAIL* is therefore as commercially significant as the substantive ruling itself. In a separate order on the

implementation of the judgment, the Supreme Court held that states may recover the cess and levy arrears for periods prior to the judgment, but only going back 12 years (the limitation period for money suits) from the date of the judgment — providing some financial relief to the mining industry by limiting the retrospective liability, while still creating a significant aggregate liability for large mining operations that had been non-compliant with state cess demands. The quantification and recovery of these arrears — the subject of ongoing proceedings before the Supreme Court's monitoring bench — will determine the ultimate financial impact on individual mining companies, and legal practitioners advising mining companies must carefully analyse their client's exposure to state cess arrears on a state-by-state and mine-by-mine basis.

1.3 MADA Framework and Jharkhand Mining Cess

The Mineral Area Development Authority (MADA) — the petitioner institution from which the case takes its name — is a statutory body established under the Mineral Area Development Authority Act of Jharkhand, with the mandate to provide infrastructure and developmental facilities in the mining areas of Jharkhand. MADA is funded through a cess levied on the transportation of minerals from mines in Jharkhand, collected from mining companies and deposited with MADA for infrastructure development in mineral-bearing districts. The challenge to MADA's cess was the vehicle through which the constitutional question of state mining taxation power was brought to the Supreme Court — and the ruling's validation of state mineral-bearing land taxation effectively validates MADA's cess mechanism and similar instruments in other states. For mining companies operating in Jharkhand, MADA cess payments (which had been disputed and in many cases not paid pending the constitutional outcome) are now clearly legally enforceable, and compliance with the MADA cess — and any revised cess rates that Jharkhand may impose in response to the empowering *MADA v. SAIL* ruling — is an immediate operational obligation.

Writ Jurisdiction in Mining Disputes: High Courts and the Supreme Court

Article 226 and 32 Petitions in Mining, Grounds of Challenge, Judicial Review Standards and Landmark Constitutional Decisions

2.1 Writ Jurisdiction Over Mining Administrative Actions

The High Courts' writ jurisdiction under Article 226 of the Constitution is the primary judicial forum for challenging mining administrative decisions — including EC grants, FC approvals, ML grants, ML terminations, royalty demand orders, and MMDR Act enforcement actions. The grounds for writ challenge of mining administrative decisions are the standard grounds of judicial review under Indian constitutional law: illegality (the decision was made without jurisdiction, or in excess of jurisdiction, or in breach of the mandatory statutory procedure); irrationality (the decision is arbitrary, capricious, or disproportionate in the *Wednesbury* sense — no reasonable authority could have reached that conclusion on the available facts and law); and procedural impropriety (the decision was made without affording the affected party a fair hearing, without considering relevant material, or by taking into account irrelevant material). Mining companies typically invoke Article 226 writ jurisdiction to: challenge the termination of an ML for alleged breach of conditions (arguing that the state government acted without following the prescribed show-cause notice and hearing procedure, or that the termination was disproportionately severe); challenge the refusal or delay in granting EC, FC, or NBWL clearances (arguing that the refusal was based on irrelevant considerations or that the delay was unreasonable); and challenge royalty demand orders that compute ASP incorrectly or apply an incorrect royalty rate.

2.2 Key Constitutional Decisions in Mining Law

The Supreme Court's mining-related constitutional jurisprudence spans seven decades and encompasses some of the court's most consequential decisions on the federal structure, fundamental rights, and the rights of tribal communities. The principal landmark decisions include: *Samatha v. State of Andhra Pradesh* (1997) — establishing that ML grants to non-tribal private entities in Fifth Schedule areas constitute an impermissible alienation of tribal land, with the court directing that 20% of profits from mining in Fifth Schedule areas be paid to tribal communities; *State of Jharkhand v. Arcelor Mittal India Pvt. Ltd.* (2019) — the Supreme Court's analysis of the Section 10A savings provision and the eligibility of specific ML applications for savings protection under the 2015 Amendment's cut-off; *Goa Foundation v. Union of India* (2014) — the court's comprehensive examination of illegally renewed mining leases in Goa, resulting in cancellation of all renewals made without following the statutory procedure and orders for

payment of compensation for environmental damage by the illegal operators; *SAIL v. Union of India* (2013) — the Supreme Court's direction for competitive bidding for iron ore and coal blocks allocations in the wake of the allocation scandals; and *Common Cause v. Union of India* (2017) — the court's direction for the cancellation of coal block allocations made outside the competitive bidding process and the quantification of the unlawful gain from illegally allocated coal blocks. These decisions collectively define the constitutional constraints on mining administration and establish the judicial review standards applied by High Courts in mining writ petitions.

2.3 Goa Foundation Cases: Illegal Leases and Compensation

The Goa Foundation cases — a series of Supreme Court decisions beginning with *Goa Foundation v. Union of India* (2014) and continuing through subsequent monitoring orders — are the most comprehensive judicial intervention in state-level mining regulation in Indian legal history, addressing the systemic failure of Goa's mining regulatory framework that allowed hundreds of mines to operate for decades without valid concessions, without complying with environmental conditions, and without paying the full royalty due to the state. The Court's 2014 decision held that all mining leases in Goa that had been renewed after the leases' original terms expired without following the statutory renewal procedure under the MMDR Act were null and void — effectively cancelling all mining operations in the state overnight. The decision's aftermath — including the dislocation of Goa's iron ore-dependent economy, the prolonged shutdown of hundreds of mines, and the complex process of re-auctioning the cancelled leases — demonstrated the severe commercial and social consequences of systemic mining regulatory failure. The Goa Foundation cases have since influenced the Supreme Court's approach to other state-level mining irregularities, establishing the principle that statutory compliance with the MMDR Act's concession framework is non-negotiable — concessions granted or renewed outside the statutory procedure have no legal validity regardless of how long they have been operating or how much investment has been made.

National Green Tribunal: Environmental Enforcement in Mining

NGT Act 2010, Original Jurisdiction, Appellate Functions, Monetary Penalties, Mine Closure Orders and Suo Motu Powers

3.1 NGT's Original Jurisdiction Over Mining

The National Green Tribunal Act, 2010 establishes the NGT as a specialised judicial body with both original jurisdiction (for disputes arising from substantial environmental damage claims) and appellate jurisdiction (for appeals against orders of environmental regulatory authorities including MoEFCC's EC grants and refusals). The NGT's original jurisdiction is invoked by applicants (including civil society organisations, affected communities, and individuals) seeking enforcement of environmental laws or compensation for environmental damage caused by mining operations — without the need to first exhaust administrative remedies before the pollution control board or the state mining department. The NGT has jurisdiction to order: the mining company to pay compensation to affected parties for damage to public health and the environment; the mining company to restore damaged ecosystems at its own cost; the closure of mines that are operating in violation of environmental laws or EC conditions; the imposition of financial penalties for environmental violations; and the appointment of expert committees to investigate alleged environmental damage and recommend remediation measures. The NGT's monetary penalty jurisdiction is particularly significant: under Section 26 of the NGT Act, the tribunal may impose a penalty of up to Rs. 25 crore for each violation of an environmental standard, with continuing penalties for violations that continue after the initial penalty order — creating the potential for penalties that dwarf the underlying mining revenue and that can threaten the financial viability of non-compliant operations.

3.2 Sand Mining and NGT Oversight

The National Green Tribunal's involvement in regulating river sand mining — one of the most environmentally and socially damaging aspects of India's mining sector — has been extensive and has generated some of the most significant environmental regulation in the sector. Sand is classified as a minor mineral under the MMDR Act, giving state governments the primary responsibility for regulating sand mining under their state minor mineral concession rules. However, the rampant illegal sand mining from riverbeds across India — motivated by the enormous demand for construction sand and the low regulated prices relative to the value of the resource — has caused severe environmental damage: river channel degradation, loss of aquatic biodiversity, lowering of water tables adjacent to rivers, damage to bridge foundations and riverbank structures, and social conflicts over access to the resource. The NGT's suo motu case

on illegal sand mining (WP 114/2011 and subsequent orders) resulted in comprehensive guidelines for sand mining — the Sustainable Sand Mining Management Guidelines, 2016 and the Sand Mining Framework, 2018 — that require environmental assessment before sand mining permits are granted, establish carrying capacity limits for sand extraction from individual rivers and river reaches, mandate GPS tracking of all vehicles engaged in sand transport, and specify the procedures for online applications and permit issuance to reduce the scope for corruption in the permit grant process.

Arbitration in Mining Concession Disputes

Arbitrability of Mining Disputes, ML Deed Arbitration Clauses, State Government Arbitration, Institutional Arbitration and Foreign Investment Disputes

4.1 Arbitrability of Mining Lease Disputes

The arbitrability of mining disputes — whether disputes arising from ML deeds, concession agreements, and related commercial contracts can be resolved through arbitration under the Arbitration and Conciliation Act, 1996 — is a significant question in mining law practice. Indian courts have generally held that commercial disputes arising from the contractual provisions of an ML deed (such as disputes about the interpretation of bid-specific conditions, the computation of premium payments, or the timing of performance obligations) are arbitrable under a valid arbitration clause in the ML deed. However, disputes that involve the exercise of statutory powers by the state government — such as the state's decision to terminate an ML under Section 4A (a statutory power exercised under a public law framework), the state's refusal to grant FC (an administrative decision under the Forest Conservation Act), or the validity of an ML grant (challenged on public law grounds) — are not arbitrable, since these disputes involve the state's public functions that cannot be displaced by private arbitration agreement.

4.2 Investment Treaty Arbitration in Mining

India's Bilateral Investment Treaties (BITs) with various countries provide foreign investors with the right to initiate international arbitration against the Government of India for alleged breaches of investment protection standards (fair and equitable treatment, protection against expropriation, national treatment, and most-favoured-nation treatment). Mining sector disputes between foreign investors and the Indian government have the potential to engage BIT arbitration where: the government cancels or terminates an ML held by a foreign investor without adequate compensation (potentially constituting indirect expropriation); the government imposes new taxation (such as MADA v. SAIL-derived state mining cesses) that disproportionately burdens foreign investors; or regulatory changes (such as the 2015 Amendment's deemed lapse of pre-existing leases) substantially impair the value of the foreign investor's mining investment without compensation. India's more recent BITs (particularly the Model BIT of 2016 and BITs concluded since then) contain more limited investment protection standards than the older generation of BITs, and exclude a broader range of government regulatory measures from the scope of expropriation protection — making new-generation BIT claims in the mining sector more difficult to sustain than under the older treaties. For legal practitioners advising foreign mining investors in India, the applicable BIT's investment protection scope, available dispute resolution procedures, and the cooling-off periods required

before arbitration can be initiated are essential inputs to the regulatory risk assessment for any significant mining investment.

Key Supreme Court Precedents in Mining Law

Section 10A Jurisprudence, Tribal Rights Cases, Coal Block Allocation Scandal, Natural Resources Doctrine and Recent 2024 Decisions

5.1 Natural Resources Doctrine and Mining

The Supreme Court's "natural resources doctrine" — developed through decisions including 2G Spectrum case (*Centre for Public Interest Litigation v. Union of India*, 2012), the Coal Block Allocation case (*Common Cause v. Union of India*, 2017), and mining-specific cases — holds that natural resources (including minerals, spectrum, and other state-owned resources) must be allocated through competitive bidding processes that maximise public revenue, and that discretionary allocation of natural resources by executive decision is presumptively unconstitutional unless there is a compelling public interest justification. The natural resources doctrine is the constitutional foundation for the MMDR Act's mandatory auction requirement under Section 10B — and the court's decisions in the coal allocation and 2G spectrum cases directly influenced the legislature's decision to mandate competitive bidding for mining concessions in the 2015 Amendment. The practical significance of the natural resources doctrine for the mining sector is that: (i) any mining concession grant that bypasses the mandatory auction process is constitutionally suspect and may be struck down as violating Article 14 (right to equality); (ii) the government cannot reserve mining blocks for discretionary allocation to favoured entities (even public sector enterprises) without meeting the high constitutional burden of demonstrating compelling public interest; and (iii) civil society organisations have the standing to challenge non-transparent or non-competitive mining concession grants before the courts.

5.2 Section 10A Savings Provision: Judicial Interpretation

The Section 10A savings provision — preserving the rights of entities that had filed ML applications or received letters of intent before the 2015 Amendment's cut-off date — has been the subject of extensive Supreme Court litigation that has progressively clarified (and generally narrowed) the scope of the savings protection. The Supreme Court's decisions in *Thriveni Earthmovers v. State of Chhattisgarh* (2022) and subsequent related cases established that Section 10A(2)(b) (which saves the right to ML for holders of unexpired prior MLs and holders of valid LoIs) requires strict interpretation — the LoI must have been unconditional, valid, and capable of being acted upon at the cut-off date; LoIs that had lapsed, were subject to conditions that had not been fulfilled, or were issued by state governments without following the prescribed procedure do not qualify for savings protection. These decisions have significantly reduced the universe of mining concessions that qualify for Section 10A protection, driving many previously

pending concession claims to the auction route. For practitioners advising mining companies with pre-2015 Section 10A claims, the judicial narrowing of the savings provision means that the viability of any savings claim must be carefully assessed against the evolving judicial standards before resources are invested in pursuing it — claims that were considered viable under broader interpretations of Section 10A may be unviable under the current judicial standards.

Booklet V Key Takeaways: The MADA v. SAIL nine-judge bench ruling of July 2024 is a watershed constitutional development that opens the door to state-level mining taxation beyond the MMDR Act's royalty framework — with potentially massive retrospective and prospective financial implications for the mining industry. Writ jurisdiction in mining cases (Article 226/32) is the principal forum for challenging ML terminations, EC/FC refusals, and royalty demands. The NGT's proactive environmental enforcement — including suo motu cases, compensation orders, and mine closure directions — is a continuous operational risk for mining companies. Arbitration is available for commercial ML deed disputes but not for statutory power exercises. The Supreme Court's natural resources doctrine mandates competitive bidding for mining concessions and remains the constitutional foundation of the post-2015 auction framework.

Mining Dispute Resolution: Practice Notes and Recent Jurisprudence

High Court Strategies, MADA v. SAIL Arrears, NGT Penalty Management, Investment Treaty Claims and the Mining Law Practice Toolkit

E.1 Post-MADA Arrears: State-Specific Analysis

The MADA v. SAIL judgment's retrospective validation of state mineral-bearing land taxes raises one of the most immediate and commercially significant legal challenges for the mining industry: the quantification, negotiation, and payment of cess and levy arrears for the periods during which these payments were contested and withheld pending the constitutional outcome. The Supreme Court's monitoring bench has directed states to assess the arrears due from mining companies based on the applicable cess rates during the arrears period, subject to the 12-year limitation cap, and to issue demand notices specifying the arrears quantum. Mining companies that receive such notices must: verify the accuracy of the arrears computation (checking the applicable cess rate for each period, the quantity of mineral extracted, and the mathematical computation of the cess amount); assess whether the statute of limitations arguments are correctly applied (the 12-year cap runs from the date of the MADA v. SAIL judgment, but there may be additional limitation arguments specific to the state's cess legislation); evaluate the financial feasibility of lump-sum payment versus installment payment arrangements; and assess whether the arrears, combined with the ongoing cess obligations going forward, materially affect the financial viability of their mining operations. In states where the cess arrears demand is very large relative to the mining company's financial resources — which may be the case for companies with decades of operations in cess-imposing states — the financial settlement of MADA v. SAIL arrears may require negotiation with the state government for installment payment arrangements, supported by independent financial assessment of the company's payment capacity and the state government's interest in maintaining the company's operational viability as a source of ongoing royalty and cess revenue.

E.2 Writ Petition Strategy for Mining Companies

Writ petitions in mining matters — filed by mining companies against adverse state government decisions, by civil society organisations against EC grants, and by affected communities against mining operations — are the primary judicial forum for contesting mining administrative actions at the state level (before High Courts) and for constitutional challenges (before the Supreme Court). Effective writ petition strategy for mining companies involves: exhausting administrative remedies before filing writ petitions (most High Courts will not entertain writ petitions against mining administrative decisions until the statutory appeal and revision remedies available before

the mining administration have been exhausted, and failure to exhaust remedies is a ground for dismissal at the maintainability stage); framing the legal challenge in constitutional terms where possible (challenging an ML termination as violating Article 14's protection against arbitrary state action, rather than merely as a breach of the ML deed's contractual terms, gives the court more substantive grounds for intervention); seeking immediate interim relief (stay of the challenged decision pending hearing) at the first hearing, since the commercial impact of an ML termination or EC suspension typically cannot be remediated retrospectively; and maintaining a parallel compliance track (demonstrating to the court that the mining company is acting in good faith and addressing the underlying concerns that motivated the challenged decision, rather than merely seeking to avoid compliance through litigation). For civil society writ petitions against EC grants and mining operations, the typical legal strategy involves: challenging procedural irregularities in the EC or FC process (missing public hearing requirements, inadequate consideration of Gram Sabha objections, failure to consider cumulative environmental impacts); challenging the substance of the EC grant (arguing that the grant was based on incorrect or incomplete EIA data); and seeking the NGT's jurisdiction in parallel with or instead of the High Court for environmental relief (since the NGT's specialist environmental expertise may provide a more favourable forum for environmental arguments than the general High Courts).

E.3 Mining Arbitration: Drafting and Practice

Arbitration clauses in mining concession agreements — ML deeds, joint venture agreements between mining companies, off-take agreements with mineral processors, and EPC contracts for mine development — require careful drafting to ensure that the arbitration mechanism is practically effective for the specific disputes that are likely to arise in a mining context. Key drafting considerations include: the scope of the arbitration clause (which disputes are referred to arbitration, and how the boundary with non-arbitrable public law disputes is drawn); the seat of arbitration (Domestic Indian arbitration under the Arbitration and Conciliation Act, 1996, or international arbitration under SIAC, ICC, or LCIA rules, depending on the international dimension of the contract and the parties); the composition of the arbitral tribunal (a sole arbitrator for smaller disputes; a three-member tribunal with each party appointing one arbitrator and the two party-appointed arbitrators jointly appointing the presiding arbitrator for larger, more complex disputes; and the desirability of arbitrators with specific mining law or technical expertise); the governing law (Indian law for domestic mining contracts; international law considerations for off-take agreements with overseas buyers or joint ventures with international partners); and the evidence management provisions (given the volume of technical documentation — geological reports, mining plans, environmental monitoring records, royalty accounts — that mining disputes typically involve, the arbitration clause should address document management, expert testimony procedures, and site inspection arrangements). Experienced mining law practitioners maintain standard arbitration clause templates for

different categories of mining contracts that reflect the lessons of past mining arbitrations — including the inadvisability of very broad arbitration clauses that attempt to cover all disputes (including those that are non-arbitrable as a matter of law) and the importance of specifying workable tribunal composition and appointment mechanisms that do not create deadlocks.

Booklet V — Complete Summary: Mining dispute resolution in India spans constitutional courts (for challenges to legislative competence and fundamental rights), High Courts (for writ review of administrative mining decisions), the NGT (for environmental enforcement), and arbitral tribunals (for commercial contract disputes). The MADA v. SAIL ruling has generated the most complex and commercially significant post-judgment compliance challenge in the mining sector's recent history — requiring systematic state-by-state analysis of cess arrears liability. The Supreme Court's natural resources doctrine and Goa Foundation jurisprudence establish the constitutional framework within which mining concession grants and renewals are judged. Effective mining dispute resolution practice requires deep expertise in constitutional law, administrative law, environmental law, commercial arbitration, and international investment law — a multi-disciplinary practice that makes experienced mining law counsel among the most commercially valuable specialists in the Indian legal profession.