



Look before you leap

Many of Vedanta's problems in India are self-inflicted and largely caused by poor due diligence, argues Ngangom Junior Luwang

The controversy surrounding British mining company Vedanta and its business ventures in India holds important lessons for infrastructure investors. The company's plans to source bauxite from the Niyamgiri Hills for its alumina refinery at Lanjigarh, Orissa, have met with disapproval, largely because if permitted, the activities would endanger the livelihoods of the Dongria Kondh and Kutia Kondh tribes in the eastern state. In 2008, the Supreme Court granted forest clearance permits to Orissa Mining Corporation (OMC) for bauxite mining in the Niyamgiri Hills to meet the requirements of Vedanta's alumina refinery at Lanjigarh. However, the NC Saxena Committee, set up by the Ministry of Environment & Forests, has recommended that the request for forest clearance be rejected and Jairam Ramesh, India's minister for environment and forests, has gone on record, saying that "There has been a very serious violation of the Environment Protection Act, the Forest Conservation Act and the Forest Rights Act."

To avoid such ignominy, Vedanta ought to have conducted comprehensive legal due diligence instead of blindly banking on OMC's assurances. The Indian government's rejection of the proposed mining activities appears to indicate its commitment to protect the country's environment and its indigenous tribes. At the same time, the government's stance suggests that compliance with India's environmental laws may be a bigger stumbling block than many infrastructure, oil and gas and mining companies imagined.

Vedanta has invited further problems by failing to obtain a forest clearance permit for the expansion of its alumina refinery at Lanjigarh. The planned expansion has come under severe criticism as it involves the unauthorized clearing of more than 26 hectares of forest land. Perhaps Vedanta had proceeded on the premise that the forest clearance permits it received earlier would be valid for the expansion. They are not. The company has clearly been caught on the wrong foot, a situation that could have been avoided with sound legal advice.

The issues facing Vedanta highlight the increasingly stringent environmental protection standards and regulatory challenges for big-ticket infrastructure projects in India. Many of Vedanta's problems are self-inflicted and could have been avoided. But who is to blame for tarnishing Vedanta's reputation? What could its corporate counsel have done to prevent the company from being lambasted?

In India, infrastructure projects may face obstacles from concerned government ministries and the courts. Such projects are closely scrutinized during public interest litigation proceedings. Keeping this in mind, it is critical for corporate counsel to ensure that environmental impact

assessments correctly identify all possible legal issues and that environmental impact management plans contain specific details on how to overcome potential hurdles. Depending on possible threats to the environment and indigenous people, regulatory authorities need to be adequately convinced about the use of effective mitigating measures. These include plans for compensatory forestation, safe working hours, safe manpower and equipment mobilization, and the use of environmentally friendly technology.

It is also vital to hold public hearings and effectively address the concerns of all stakeholders including those of the local people likely to be affected. Similarly, an effective mechanism for avoiding messy litigation needs to be put in place and courts need to be satisfied that the project has obtained all regulatory and statutory clearances.

Vedanta is not the only company battling regulatory roadblocks. Lafarge, a French cement maker, is facing problems in its plan to set up a Rs9 billion (US\$200 million) cement plant in Himachal Pradesh and a limestone quarry in the East Khasi Hills of Meghalaya. But like Vedanta, Lafarge may have only itself to blame for the fiasco, as it purportedly misrepresented the land in question as "uncultivable" in Himachal and as "near wasteland" in Meghalaya.

India's strict environmental regime is raising hackles among the country's state governments as well. Environmental concerns are at present stalling a dozen projects, including the proposed Navi Mumbai airport project, a proposed 10,000 megawatt atomic project at Dhopave in Ratnagiri and a 5x800 megawatt imported coal-based ultra mega thermal power project at Girya, along with thermal power projects of varying capacities at Shahpur, Bhopan, Jaigad, Ranpat, Pavas, Munge and Dhakare.

Environmental concerns and the rights of forest dwellers and tribals have become sensitive issues as India strives for sustainable and inclusive growth and foreign companies need to adjust themselves to this new reality. Bearing in mind that special legislation exists for minority communities, corporate bodies operating in India must conduct thorough legal due diligence before embarking on a new project.

In the past, courts have permitted seismic surveys and oil explorations in sensitive locations like the Brahmaputra river, and gas pipeline projects through hundreds of kilometres of tiger reserves and protected forests. While there is no reason to believe that this will not happen in the future, sound legal due diligence and regular consultancy with expert lawyers – both before and during the project – are more important now than ever before. ■

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