

Concept of Green Credit Must Not Overlap Corporate Environmental Responsibilities Mechanism



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Abstract

The 'Lifestyle for the Environment' is an innovative scheme introduced by the Ministry of Environment Forests and Climate Change (hereinafter 'MoEF and CC') in the month of June 2023. Prime Minister Shri Narendra Modi informed about the Lifestyle for Environment scheme introduced by the MoEF and CC in the Conference of parties that took place in the Arab Republic of Egypt. The Lifestyle for Environment scheme aims to encourage industries, non-governmental organizations and individuals to work for the protection and conservation of the environment and environmental resources. This paper endeavours to state measures to ensure that the corporate environmental responsibility mechanism is kept segregated from the Green Credit scheme. The author hopes that these measures will proliferate a way towards efficient implementation of the green credit scheme and will increase the likelihood of its experimentation by other countries

Keywords: Recognition of efforts; Corporate environmental responsibilities; Carbon credits; Protection of environment; Carbon dioxide removals; International covenants; Green credits; Equal but differentiated responsibilities; Constitution of India

Introduction

The 'Lifestyle for the Environment' is an innovative scheme introduced by the Ministry of Environment Forests and Climate Change (hereinafter 'MoEF and CC') in the month of June 2023. Prime Minister Shri Narendra Modi informed about the Lifestyle for Environment scheme introduced by the MoEF and CC in the Conference of parties that took place in the Arab Republic of Egypt. The Lifestyle for Environment scheme aims to encourage industries, non-governmental organizations and individuals to work for the protection and conservation of the environment and environmental resources. This is an innovative scheme which furthers intends to boost up the community led resource protections by conferment of Green Credits. These Green Credits are an estimation of community and individual centric efforts for protection of the environment. The Lifestyle for Environment scheme provides some sectors like plantation of trees, water conservation, soil reclamation measures, etc. and affirms to trade the green credits generated in a domestic market platform. However, there are some of the recursive effects of the green credit scheme which must be replenished for efficient implementation of this scheme.

International Declarations on Environment

Stockholm commenced the deliberation of global leaders for the protection and conservation of environment and environmental resources. The Stockholm Conference of 1972 convened the Stockholm Declaration on Human Environment (hereafter 'Stockholm Declaration') which states, 'Man has the fundamental right to freedom, equality and adequate conditions of life. The declaration at Stockholm proclaims that man bears a solemn responsibility to protect and improve the environment for present and future generations. These declarations propounded the concept called inter-generational equities for environment protection. Principle 2 of Stockholm Declaration provides, 'The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.' Principle 3 of the Stockholm Declaration emphasizes on responsibilities of mankind to protect the resources of the earth. Principle 3 provides, 'The capacity of the earth to produce vital renewable resources must be maintained and, wherever

practicable, restored or improved.' This principle forms the genesis for an innovative concept called 'Green Credit' pronounced by the 'Lifestyle for the Environment Rules 2023' by the Ministry of Environment, Forest and Climate Change of the Government of India. The Lifestyle Rules invite people of all communities irrespective of their race, caste, geographical origin or nationality to plant trees, conserve water, ensure purification of land, air, water and atmosphere and do all the activities suggested by the scheme. These activities aim for restoration of deserted lands and improvements in the air quality to the optimum extent.

Stockholm declaration specifically emphasizes in Principle 13 that States must ensure that development is compatible with the need to protect and improve environment for the benefit of their population. Rio Declaration on Environment and Development specifically emphasizes that 'Peace, development and environment protection are interdependent and indivisible.' The Rio declaration further provides, 'The right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.'

Principle 17 of the Stockholm declaration states, 'Appropriate national institutions must be entrusted with the task of planning, managing or controlling the environmental resources of States with a view to enhancing environmental quality.' Lifestyle Rules 2023, in consonance with the aims and objectives of Principle 17, establishes a national Green Credit Fund with authorities to the Administrator thereof to deposit, allocate and monitor the effective utilization of funds for the proper conservation of environmental resources.

The aims and objectives of the Rio Declaration on 'The Future We Want' provides on 'forest conservation':

"We reaffirm that the wide range of products and services that forests provide creates opportunities to address many of the most pressing sustainable development challenges. We call for enhanced efforts to achieve the sustainable management of forests, reforestation, restoration and afforestation, and we support all efforts that effectively slow, halt and reverse deforestation and forest degradation, including inter alia promoting trade in legally-harvested forest products. We note the importance of ongoing initiatives such as reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and

enhancement of forest carbon stocks in developing countries. We call for increased efforts to strengthen forest governance frameworks and means of implementation, in accordance with Non-Legally Binding Instrument on All Types of Forests (NLBI) to achieve sustainable forest management."

Corporate Environmental Responsibilities and the Scheme of Green Credit

The corporate environmental responsibilities have become a necessary part of the functioning of industries and public sector corporations. The impact of green credit generation upon the corporate environment's responsibilities could be traversed on following grounds:

i. Corporate Environmental Responsibility is a necessary attribute of all the developmental projects like mining, construction of roads, dams, bridges, canals, etc. The notification of 2006 by the MoEF and CC¹ mandates the Environmental Impact Assessment² for all projects which are above fifty hectares for excavation of minerals, above fifty-megawatt hydroelectric power generation plants, or where production capacity for cement, minerals, etc. is 0.1 to 1.0 million tons. These high production industries or industries with larger area layout are included in Category A projects and they require permission from the Central government for the initiation of their industrial establishments³. Therefore, the environment conservation measures initiated by these industries in pursuance of their environment impact assessment reports must be calculated specifically, i.e., they must be particular and separate from the calculations made in reference to the Lifestyle for the Environment scheme. It is further emphatic that the Green Credits generated by these industries, the non-governmental organizations and the individuals are classified in segregation in the annual reports generated by the concerned departments of government at the State and Central level.

Further, the Certificates generated by the MoEF and CC to calculate the green credits must state the extent of carbon credits generated by the plantation of trees, water conservation, restoration or rejuvenation of water bodies, etc. Such calculation of green credits in reference to the corresponding carbon credits generated will provide a robust platform to reflect Government's commitment towards implementation of the aims and objectives delineated in the Nationally Determined Contribution statement for the Government of India.

¹ <http://www.environmentwb.gov.in/pdf/EIA%20Notification,%202006.pdf>. (accessed 31.12.2023).

² Principle 17 of the Rio Declaration on Environment and Development 1992 provides, 'Environmental impact assessment, as a national instrument, shall be undertaken for proposed activities that are likely to have a significant adverse impact on the environment and are subject to a decision of a competent national authority.'

³ The Indian Express, Govt notification proposes 10% tree cover at construction sites, seeks views, (19.12.2023), <https://indianexpress.com/article/india/centre-mandate-green-cover-plots-construction-projects-7801336/>. Deccan Herald, SC stays NGT order on planting 10 trees before cutting one in state, (19.12.2023), <https://www.deccanherald.com/india/karnataka/sc-stays-ngt-order-planting-1915515>.

⁴ MoEF and CC, Government of India, Environment Impact Assessment notification 2020, https://environmentclearance.nic.in/writereaddata/Draft_EIA_2020.pdf. (accessed 31.12.2023). The Environment Impact Assessment notification of 2006 by the MoEF and CC is superseded by the notification of 2020 which states at paragraph 4 about the requirement of prior environment permission before renewal of lease or extension of lease period. Paragraph 4 of the notification of 2020 reads:

ii. Further, the government lease for excavation of ores is generally subject to a term of thirty years. This is in spite of the fact that the mining lease is granted for any region pursuant to the availability of mines that are difficult to exhaust even after the cessation of three times of the lease period. So, the specifications of the terms of business which limit the time for excavation of any mining site is with the sole purpose of protection of environment and conservation of environmental resources. This specific purpose is reminiscent of paragraph 7.ii of the Environment Impact Assessment notification of 2006 by the MoEF and CC which states for renewal of lease:

“Paragraph 7 (ii). Prior Environmental Clearance (EC) process for Expansion or Modernization or Change of product mix in existing projects:

All applications seeking prior environmental clearance for expansion with increase in the production capacity beyond the capacity for which prior environmental clearance has been granted under this notification or with increase in either lease area or production capacity in the case of mining projects or for the modernization of an existing unit with increase in the total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and or technology or involving a change in the product –mix shall be made in Form I and they shall be considered by the concerned Expert Appraisal Committee or State Level Expert Appraisal Committee within sixty days, who will decide on the due diligence necessary including preparation of EIA and public consultations and the application shall be appraised accordingly for grant of environmental clearance.”

Therefore, since the environment protection measures are a pre-condition for grant, renewal and extension of leases and for the operation of mining business, the operation of hydroelectric power plants or for production industries, crores of expenditure are allocated for implementation of in the contract itself. Even there are penal provisions for non-implementation of environment conservation measures.

Now, after generation of credits by the individuals and civil society, the industries are most likely to purchase them from the domestic market platforms. So, such purchase of green credits generated by individuals and civil society must not become a substitute towards fulfillment of the environmental obligations provided in the environment impact assessment or through the corporate environmental responsibility funds. This is for the reason that the environment impact assessment notification of 2006 and the subsequent notification of 2020⁴ issued by the MoEF and CC emphasize proactive efforts by the industrial corporations for the protection of environment rather by any private agencies working at a different location. The contract granting lease to the mining departments necessitates the lessee to fulfill environmental parameters on the cost sanctioned for implementation of the contract itself.

Corporate Environmental Responsibility is an attribute of a prior methodology called Corporate Social responsibility which caters exclusively for environment related footprints. Definitely, the corporate environmental responsibility funds will confer a unique opportunity for the corporate houses to extract green credits for every environment consistent public service performed by them. The Lifestyle for Environment Rules 2023 could incentivize the industrial laborers, daily wage workers and the office holders to attain green credits for the environment protection measures at their individual levels and will thus boost up their work independent form the credit conferred by their organization.

Corporate Environmental Responsibility Must Not Become a Green Credit Fund

The statement of objects and reasons section of the Lifestyle for Environment Rules 2023 states, ‘Green Credits will be tradable outcomes and will act as incentives. In the beginning, green credits will be made available to individuals and entities, engaged in selected activities and who undertake environmental interventions. These Green Credits will be made available for trading on a domestic market platform.’ Particularly, the industries are required to annually showcase their commitments towards environmental protection. So, the industries will be most likely to purchase green credits in the domestic market platforms. For industries, corporate environmental responsibility is the only fund, and the exclusive fund dedicated to exhausting the expenses for protection and conservation of environment. The remaining funds are for amenities like welfare, health and sustenance of industrial laborers, the maintenance of industrial equipment and for investments in the industries to generate outputs that reflect income. So, the industries must be guarded off against purchase of tradable green credits for the reason that⁵:

- i. The purchase of green credits from the domestic market platforms will induce industries to get satisfied towards their environmental commitments through exchange of finance;
- ii. Such exchanges of finance will adorn their annual returns which will reflect a positive commitment towards environmental protection which in fact is just the efforts of non-governmental organizations;
- iii. Such exchanges of finance will be an illusion for the industrial outputs for the reason that it will de-boost the active commitments towards environment protection through them in house mechanisms;
- iv. There are managerial constraints which restrict any private person or non-governmental organization from entrance, planning and execution of environmental protection measures inside any industrial establishment. So, the green credits generated outside the industries in a remote location cannot replenish the flora and fauna endangered due to mining

by excavation of ores, manufacture of kilns, cements, glasses, etc. in the respective industries and factories or their premises. This is for the reason that the green credits will always be generated at a location far away than the corresponding industrial establishment which subsequently seeks to purchase them.

v. It is necessary to note that every works contract comes into effect for the purposes of gaining profits. If the industrial establishments will tend to purchase the green credits generated by the government organizations or by the non-governmental organizations or the public, they will be at loss for the reason that they will incur double levies for the same cause, i.e., the levies forming part of the contract and the levy which they will adhere to through the purchase of green credits generated by the Lifestyle for the Environment scheme.

vi. The owner and possessor are better equipped with geographical and environmental causes in respect of their industrial establishments than the subsequent lessees or the non-governmental organizations who affirm the environment protection measures.

vii. The green credit scheme provides in the statement of objects and reasons of the Lifestyle for the Environment Rules 2023 that the Green Credits generated from the proposals fulfilled by the government will be tradable outcomes and further that such credits will be available for purchase in the domestic market platforms. This statement signifies that the government aims to implement a liberal methodology for environment protection where the industries will be invited to purchase the green credits generated. The Green Credits get generated subject to the deposit of a prescribed fee on terms dictated by the Administrator to the Lifestyle Rules. Therefore, the activity for which the green credit gets generated is pre-funded by the public or an organization outside the government. Later, when the proposal of plantation under the Lifestyle Rules for the Environment 2023 is implemented by the agencies of the government, they do not designate the area to be a part of the protected forest or community reserve, etc. Instead, the area afforested by the government is made eligible for the generation of tradable outcomes from private enterprises. If a corporation purchases these green credits, whether they can be exonerated from the environmental obligations which

form the part and parcel of their contract or lease agreement? In fact, even after the purchase of a segment of green credit, the corporations will have to incur liabilities towards the fulfillment of their obligations to plant trees in a degraded land double the area of the lease granted to them for the purposes of excavation of minerals. Similarly, they must reclaim the land excavated in their project cost. These environmental obligations imposed by the letter for the grant of sanction of mine leases by the Government of India cannot be substituted through Green Credits purchased by them. This is for the reason that there is absence of any such stipulation in the terms of the contract of the grant of lease that the corporations have choice either to fulfill the terms of the sanction letter for mine lease or can fulfill the same through the purchase of green credits equivalent. Therefore, they will definitely be at loss if green credits are sought to be substituted to fulfill a condition of lease [1-8].

Conclusion

Lifestyle for the Environment Rules 2023 aims to provide an innovative mechanism to protect the environment by conferring 'Green credits' for every environment related activity accomplished by an individual, community or non-governmental organization. The statement of objects and reasons of these rules affirm that the green credits generated will be available for trading in a domestic market platform. This paper endeavours to state that such trading of green credits must not become a substitute towards the environment protection measures being undertaken by the industries through their corporate environment responsibilities mechanism. This is essential for the reason that any such purchase of green credits will entail an additional monetary burden on the corporate environment funds and secondly, there will be likelihood of double counting due to the expenditure of funds for the same cause by the industries. Green credit scheme definitely aims to integrate individuals and the civic community for protection of environment and allures them through recognitions of their efforts for environment protection.

Green credit generation will fulfill the principle of Common but differentiated responsibilities stated in article 7 of the Rio Convention on Environment and Development convened at Rio de Janeiro in the year 1992 which states: 'States shall cooperate

⁵Requirement of Prior Environment Clearance or Prior Environment Permission:

(1) New projects or activities including expansion or modernization of project or activities listed in the schedule under Category 'A'; Category 'B1'; and Category 'B2' that are required to be placed before Appraisal Committee as specified in the Schedule, shall require Prior Environment Clearance from the concerned Regulatory Authority before start of any construction work or installation or establishment or excavation or modernization, whichever is earlier, on site or before expanding the production and / or project area beyond the limit specified in the prior-EC or prior-EP, as the case may be, granted earlier.

(2) New projects or activities including expansion or modernization of project or activities listed in the schedule under Category 'B2' that are not required to be placed before Appraisal Committee as specified in the Schedule, shall require Prior Environment Permission from the concerned Regulatory Authority before start of any construction work or installation or establishment or excavation or modernization, whichever is earlier, on site or before expanding the production and / or project area beyond the limit specified in the prior-EC or prior-EP, as the case may be, granted earlier.

(3) It is, however, clarified that 'construction work' for the purpose of this notification shall not include securing the land by fencing or compound wall; temporary shed for security guard(s); leveling of the land without any tree felling; geo-technical investigations if any required for the project."

in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of the different contributions to global environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.' The principle of common but differentiated responsibilities is followed in the subsequent environment protection conventions like United Nations Framework Convention on Climate Change, Rio+20 declaration, 'The Future We Want' and in some of the Nationally Determined Contributions and is affirmed by the concept of green credit.

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