

BY SPEED POST

No.47011/7(46)/93-CPA/CPAM/CA-I
Government of India
Ministry of Coal

Shastri Bhawan, New Delhi

DATED: 3RD JANUARY, 2017

To,

The Managing Director,
West Bengal Power Development Corporation Limited,
Bidyut Unnayan Bhavan, 3/C, Block -LA,
Sector -III, Bidhannager, Kolkata 700098.

Subject : Consideration of the supplementary reply of West Bengal Power Development Corporation Ltd. (WBPDC) for deduction/release of BG submitted in respect of Pachwara North coal block as per directions of Hon'ble Kolkata High Court in AST No.217 of 2016.

Sir,

I am directed to refer to the subject mentioned above and to say that the Inter-Ministerial Group held its 35th, 36th and 37th meetings on 16.08.2016, 02.11.2016 and 05.12.2016 respectively. The IMG in its 35th meeting granted an opportunity to representatives of WBPDC to appear and make presentation before it. The IMG had also considered WBPDC's supplementary letter dated 14.07.2016 as directed by Hon'ble High Court of Kolkata.

2. Representatives of WBPDC appeared and made oral presentation before the IMG in its 35th meeting. They contended that although the block was allocated in favour of WBPDC, subsequently vide MoC's Notification dated 23.06.2005, the Central Government specified as an end use, the supply of coal from Pachwara (North) coal block by the Bengal Emta Coal Mines Ltd. (BECML) on an exclusive basis to the power plants of the WBPDC for generation of thermal power subject to the condition that the West Bengal Government, through its undertakings, namely, WBPDC and Durgapur Projects Ltd., held at least 26% of voting equity share capital of BECML at all times. Subsequent to issuance of the said Notification, mining lease of Pachwara (North) coal block was executed in favour of BECML and it was BECML which was extracting coal from the said block and supplying to power plants of WBPDC for generation of thermal power. Also, as per Section 3(1)(n) of the Coal Mines (Special Provisions) Act, 2015, BECML is the prior allocatee for Pachwara (North) coal block as mining lease of Pachwara North coal block had been executed in its name. Hence, the WBPDC representatives argued, the JV company i.e. BECML was the allocatee of Pachwara (North) coal block and not WBPDC.

3. The IMG enquired from the representative of WBPDC whether any

shareholding agreement was entered into between the JV partners of BECML and what was the condition of submission of BG to MoC in respect of Pachwara (North) coal block in that agreement. Representatives of WBPDCCL were unable to answer the query raised by IMG; he only stated that BG had been submitted by WBPDCCL for the said block. Hence, the IMG requested the representative of WBPDCCL to verify the records and submit the shareholding agreement, if any, to MoC for examination. However, no information in this regard has been submitted by WBPDCCL to MoC so far.

4. In respect of WBPDCCL's contention that as per Section 3(1)(n) of the Coal Mines (Special Provisions) Act, 2015 [CM (SP) Act], BECML was the prior allocatee for Pachwara (North) coal block, the IMG observed that the definition of prior allottee as contained in the CM (SP) Act, 2015 was for the purposes of payment of additional levy, receipt of compensation for mine infrastructure, etc. However, before cancellation by Hon'ble Supreme Court, Pachwara (North) coal block was allocated under the provisions of the Coal Mines (Nationalization) Act, 1973 to WBPDCCL. And this is the point from where the entire sequence of events generated. Further, subsequent events do not controvert or dilute the initial position. Accordingly, it is logical to infer that WBPDCCL is the prior allottee of Pachwara (North) coal block for the purpose of BG deduction. MoC's action to invoke BG does not emanate from CM(SP) Act but is an incident of the contract formed through allocation letter dated 26.04.2005 of Pachwara (North) coal block. And this event remains intact at all subsequent stages. Hence, this contention of WBPDCCL is not sustainable.

5. Further, the representatives of WBPDCCL contended that on 28.03.2013 permission to open the coal mine was given by the Coal Controller. This was expressly made subject to obtaining required clearance from the competent authorities under the relevant rules, regulations etc. They further contended that immediately after getting this opening permission, the prior allottee i.e. BECML (as per their interpretation), made an application on 09.05.2013 to the Jharkhand State Pollution Control Board (JSPCB) for consent to operate. This consent to operate was issued on 28.12.2013. Only thereafter, the mine could be operated. Thus, the first financial year of operation was the year 2013-14. For the period post 28.12.2013 and upto 30.03.2014, there was only approximately 3 months' time, during which period the prior allottee produced 0.098 MT of coal. Thereafter, for the full financial year, 2014-15, the prior allottee produced 3.9498 MT coal as against the target of 2 MT for the first year specified in the approved mining plan. Thus, there was no shortfall in production.

6. The IMG took note of the above contention of WBPDCCL's representatives and recommended that the Coal Controller Organisation (CCO) would verify from its records as to how the mine opening permission (MOP) was granted prior to consent of JSPCB to operate and also as to whether MOP was mandatory for getting the consent to operate or vice-versa. Accordingly, the IMG in its 35th meeting recommended that if the MOP was inadvertently granted before prior allottee having obtained the consent to operate, then CCO should revisit the BG deduction calculation

as per the guidelines formulated by the IMG in its 34th meeting.

7. Subsequent to 35th IMG meeting, CCO communicated to MoC that approval of State Pollution Control Board (Air & Water) is necessary and the same is not found in their records. Accordingly, re-calculated figures of BG deduction amount was sent by CCO which comes to Rs.4.592514 crores. The BG deduction calculation sheet is enclosed as Annexure. It may be mentioned that the principle adopted for determination of BG amount to be deducted for any lag in production was as formulated in the 34th meeting of IMG which is as under :

“The financial year in which mine opening permission was granted by CCO, will be considered as the first year and targeted production for that year may be calculated on pro-rata basis of production schedule mentioned in the approved mining plan. The BG determined to be deducted for lag in production in subsequent year may be calculated as per schedule of production given in mining plan for each year of production vis-à-vis actual coal production. If the coal produced by the prior allottee(s) in some specific year is more than the PRC of that particular year, the same may be adjusted to compensate the prior allottee(s) for any lag in production in previous or subsequent year(s) of production.”

8. This IMG in its 36th meeting noted that there is no clarity on the issue as to how mine opening permission was granted by CCO without ascertaining the fact that ‘Consent to Operate’ from the State Pollution Control Board was not available with WBPDC. Accordingly, the IMG recommended that an inquiry officer from Ministry of Coal would visit the CCO, Kolkata to verify the following and submit a report along with complete facts of the case to the IMG.

9. The Inquiry Report was placed before the IMG in its 36th meeting. The Inquiry report *inter alia* concluded that there is a lapse also on the part of the prior allottee of Pachwara North coal block who had not taken all the clearances from competent authority under the relevant rules/regulations before applying for mine opening; nor the prior allottee brought it to the notice of CCO even after obtaining the mine opening permission which they were supposed to as per the conditions mentioned at Serial No.2 of the Mine Opening permission letter.

10. Further, the IMG noted the terms and conditions of the allocation letter. As per the allocation letter, the Bank Guarantee (BG) of Pachwara North coal block is linked 100% to production of coal and since on 28.12.2013, i.e. when the Consent to Operate was obtained after which the coal production commenced, F.Y. 2013-14 be taken as the first year of production and BG deduction calculation be made on pro-rata basis for the remaining months of F.Y. 2013-14 vis-a-vis production schedule approved in the mining plan for 1st year of production. Accordingly, CCO placed the BG deduction calculations which came to be Rs.4.592514 crores. Hence, the IMG recommended invoking BG amounting to Rs.4.592514 crores from the

total BG submitted by the prior allottee of Pachwara (North) coal block and returning the remaining BG.

11. The recommendation of the IMG in its 37th meeting in respect of deduction of BG submitted by WBPDCCL for Pachwara (North) coal blocks has been accepted by the Government. Therefore, it has been decided that BG amounting to Rs.4.592514 crores submitted by the prior allottee of Pachwara (North) coal block, viz. WBPDCCL, be invoked and deposited with the Government. However, in pursuance of Hon'ble Calcutta High Court's order dated 01.07.2016 passed in AST No.217 of 2016, the action regarding invocation of BG is put on hold for a period of 2 weeks from the date of issue of this letter to enable WBPDCCL to take appropriate steps in accordance with law.

Yours faithfully,



[RISHAN RYNTATHIANG]

Under Secretary to the Government of India

Tel : 23073936

Encl : As above.

Copy to :-

1. The Secretary, Ministry of Power, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. Shri Anjani Kumar, Coal Controller, Coal Controller Organisation, 1, Council House Street, Kolkata -700 001 with request to take necessary action w.r.t. para 11 of this letter.
3. ✓ Technical Director, NIC, MoC for uploading this letter on the web-site of MoC.