

Through Email/Speed Post

F.No 104/12/2015/NA
Government of India
Ministry of Coal
O/o Nominated Authority

120, F-Wing, 1st Floor , Shastri Bhawan
New Delhi- 110001, Dated: 03.05.2019

To,

The Manager,
ICICI Bank Limited,
Commercial Banking
9A, Phelps Building, Inner Circle,
Connaught Place, New Delhi-110001

And

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To

The Managing Director
Essar Power M.P. Limited
Equinox Business Park, 5th Floor, Tower – 2,
Off Bandra Kurla Complex
L.B.S. Marg, Kurla(W), Mumbai – 400070.

Subject:- Termination of Coal Mines Development and Production Agreement and Vesting Order in respect of Tokisud North Coal Mine.

Sir,

I am to refer to the Coal Mine Development and production Agreement (CMDPA) dated 02.03.2015 signed between The Nominated Authority & M/s Essar Power M.P. Limited (EPMPL) (Successful Bidder) in respect of Tokisud North Coal Mine and to say that as per Clause 10.1 " *The Conduct of the mining Operations at the Coal Mine shall be subject to the milestones listed in SCHEDULE E (the "Efficiency Parameter")*. Further, as per the Schedule E of the CMDPA application for the transfer of all the statutory clearances were to be made within one month from the Vesting Date i.e 01.04.2015



and all the statutory clearances including Mine Opening Permission were to be obtained within 3 months from the Vesting Date. Accordingly, the coal mine was supposed to be operationalize with in 3 months of the Vesting order. However, several instances of the deviations from the achievement of milestones listed in SCHEDULE E have been noted in respect of the coal mine, which are as under:-

SI No.	Milestones	Actual Date of Completion	Delay/Pending
Date of Application for transfer of statutory permissions in favour of SB. Due Date of Completion was 01.05.2015.			
1	Mine opening permission	-	Pending till date
	Permission from DGMS	-	Pending till date
	Power Line from State Electricity Board	16.06.2015	Delayed
Date of transfer of statutory permissions in favour of SB. Due date of Completion was 1.07.2015.			
2	Grant of ML	28.07.2015.	Delayed
	Execution of ML	24.11.2016	Delayed
	Mine opening permission	-	Pending till date
	Permission from DGMS	-	Pending till date
	Ground Water clearance	14.12.2015	Delayed
	Explosive License	-	Pending till date
	Consent to Operate	31.03.2017	Delayed
	Land Mutation	-	Pending till date
	Power Line from State Electricity Board	-	Pending till date

3. The Successful Bidder was also given a Show Cause Notice 22.07.2016 for Various lapses i.e application for Mine opening permission, Permission from DGMS and Power Line from State Electricity Board.

4. It is mentioned that, a Scrutiny committee was constituted to consider/ examine the submissions/ replies made by the successful Bidders/ Allottees of the coal mines in respect of deviation from the Efficiency Parameter as mentioned in the Coal Mines Development and Production Agreement/ Allotment Agreement. The 2nd meeting of the Scrutiny Committee was convened 22.09.2017 to examine the reasons leading to inordinate delay in operationalization of the coal mine as well

as to consider the replies submitted by the EPMPL in relation to the Show Cause Notice dated 22.07.2016 issued to them by the Nominated Authority for non-compliance of the milestones/provisions of the Coal Mine Development & Production Agreement (CMDPA). The representatives of the Successful Bidder was also present at the meeting and was requested to present their cases before the Committee. After due deliberation of the submissions, the committee recommended as under:-

The Committee considered the terms and conditions of Coal Mine Development and Production Agreement, the Show Cause Notices issued, the reply as well as submissions made by the company before the Committee along with the status paper placed before the Committee. The Committee noted that the coal mine is Schedule II coal mine and all the applications for the transfer of statutory clearance were to be made within one month of the Vesting Date. However, the application for Power Line was submitted after due date and application for Mine Opening Permission and Permission from DGMS are still pending till date and the reply submitted by SB also does not justify the delay. Committee further noted that all the statutory clearance were to be obtained within 3 months of the Vesting Date and accordingly, the coal mine was scheduled to be operational within 3 months of Vesting Date i.e. by 30th June 2015. However, Grant of Mining Lease and Ground Water Clearance were obtained after due date whereas the Mine Opening Permission from CCO, Permission from DGMS, Explosive License, Land Mutation and permission of Power Line from the State utility are still pending. This is in violation of Clause 10.1 of the CMDPA. The Mining Lease was also executed on 26.11.2016 i.e. after 17 months form scheduled date that too after repeated persuasion/direction by the State Government of Jharkhand as well as by the Nominated Authority. As observed above there has been non-compliance by the SB with all the Milestones/ Efficiency Parameters at more than 5 instances viz not applying for Mine Opening Permission, Permission for DGMS, delay in making application for Power Line, delay in execution of Mining Lease, delay in transfer of Ground Water Clearance, Consent to Operate, pending Mine Opening Permission, Permission from DGMS, Explosive Licence, Land Mutation, Power Line and Railway Siding till date. It is noted that non-compliance of



Efficiency Parameters for more than five instances is a Termination Event as per Clause 24.3.1(f) of the CMDPA. The Performance Security of the SB has already been appropriated in part previously. Further, absolutely no progress has been made by the SB since the execution of Mining Lease in November 2016. No efforts are being made by the SB for the grant of Mine Opening Permission even after the execution of Mining Lease as the same was pending due to non-execution of Mining Lease. Further, no efforts appears to be having made by the SB for the mutation of the vested land as well as for other clearances also. The Chief Secretary, Government of Jharkhand has recently asked Central Government to take action against the company as the SB is not serious in operating the mine. As informed by the Nominated Authority there is an estimated loss of revenue of Rs 257.5 crores (excluding Royalty, Taxes etc) to the State Exchequer annually. In the light of aforesaid facts the Committee is of opinion that the Central Government may consider termination of CMDPA and Vesting Order in terms of Clause 24.3.1 (s) of the CMDPA which stipulates that: - "in the opinion of the Central Government, it is expedient in public interest to terminate this Agreement".

In view of the continued unsatisfactory progress in development of coal mine and taking into account all factors, the Committee recommends that coal mine may be de-allocated in terms of Clause 24.3.1 of the CMDPA and forfeiture/ appropriation of performance security and other payments under clause 24.3.3. For this purpose a Show Cause Notice may be issued to the Successful Bidder, reply of which may be placed before the Scrutiny Committee for final decision.

3. In view of the recommendation of the Scrutiny meeting, a Show cause notice dated 20th October was issued to Successful Bidder as to why action as per Clause 24.3.3 of the CMDPA should not be taken against M/s Essar Power M.P. Limited towards termination of CMDPA and Vesting Order in respect of Tokisud North coal mine failing which it will be assumed that the Company has no reply to submit and action will be taken accordingly.

4. The reply of the aforesaid Show Cause Notice submitted by Essar Power M P Limited was placed before the Scrutiny Committee in its 4th

meeting held on 01.12.2017 for consideration/examination wherein the committee noted that no new facts have been brought to light by way of reply and recommendation for termination of the CMDPA and Vesting Order. The Committee had decided that Nominated Authority may initiate action as decided in the 2nd meeting of Scrutiny Committee meeting, however, the same be may be put on hold till further orders from the Hon'ble Delhi High Court. The recommendation of Committee is reproduced as under :-

In its 2nd meeting, the Scrutiny Committee had taken note of the continued unsatisfactory progress in development of coal mine and taking into account all factors, recommended that coal mine may be de-allocated in terms of Clause 24.3.1 of the CMDPA and that the performance security and other payments may be forfeited/ appropriated under clause 24.3.3. For this purpose a Show Cause Notice was issued to the SB, the reply of which was placed before the Scrutiny Committee for final decision.

In its response, the SB has mentioned that in May 2017, Essar Power M.P. Limited (EPMPL) had filed a writ petition in the Hon'ble High Court of Delhi against Union of India and Others against the Notification dated 16.04.2015, issued by the Union of India through the Ministry of Power putting a cap on the fixed charges/capacity charges or in the alternative, for an order quashing the entire tender process conducted by the Nominated Authority respectively for the coal mine and consequently, direct the NA/ MoC to refund the Performance Security, Upfront Amount, Fixed Amount and other incidental expenses incurred by SB towards the mining lease and other developmental activities of the coal mine and for an order to restore status quo ante prior to the bidding for coal mine.

The Hon'ble Delhi High Court has passed an order extending stay against coercive action by the Respondents against SB till 06.12.2017 which is the next date of hearing on the matter. The committee noted that no new facts had been brought to light by way of replies from SB. However, in view of the writ petition pending with the Hon'ble High Court of Delhi, the earlier recommendations of the committee with respect to the decision taken in 2nd Scrutiny Committee meeting may be put on hold till further orders from the Hon'ble Delhi High Court.

6. Now, the Hon'ble High Court of Delhi vide order dated 15.04.2019 has dismissed the Writ Petition W.P (C) 4555/2017 filed by Essar Power M P Limited.

7. The recommendation of the Scrutiny Committee has been deliberated by Nominated Authority and Central Government and it has been observed that Successful Bidder Successful Bidder is reluctant to get the mining lease executed which shows that the Successful Bidder is unwilling to get the mine operationalized rather sought several extension from the State Government for the execution of same. The State Government had rejected the request of Successful Bidder for extension of execution of Mining Lease . The State Government further directed the Successful Bidder to execute the Mining Lease by 30.05.2016 and it was reiterated that if the Successful Bidder will fail to do so they will approach to Nominated Authority for the de-allocation of coal mine. However, the same was executed on 26.11.2016. The Successful Bidder had also defaulted on the payment of 2rd and 3rd Installments of Upfront Amount. It has also been observed that no efforts are being made by the Successful Bidder for the grant of Mine Opening Permission even after the execution of Mining Lease as the same was pending due to non-execution of Mining Lease. Further, no efforts appears to be have been made by the Successful Bidder for other clearances also to make the coal mine operational. The Government of Jharkhand had also asked Central Government to take action against the company as the SB is not serious in operating the mine.

8. As per Clause Rule 13 (6) of the Coal Mines (Special Provisions) Rules, 2014, the vesting order shall be cancelled by the Nominated Authority in case of breach of terms of the agreement (CMDPA). As per Clause 24.3.1 (f) , (n) and (s) of the CMDPA, the above lapses on the part of the Successful Bidder constitute Termination Events. Accordingly, this letter may be treated as notice under Clause 24.3.2 of the CMDPA. On completion of notice period of 15 business days on **24.05.2019**, the CMDPA and Vesting Order shall stand terminated and the Successful Bidder shall not be entitled to any benefits under the CMDPA but would continue to be liable towards any antecedent liability, all obligations



occurred before the effective date of the surrender /termination and also for the obligation that must be fulfilled after termination.

9. **The Branch Manager, ICICI Bank Limited , is hereby, requested to treat this notice as demand under Bank Guarantee No.039BG00184615 dated 19.03.2015 and subsequently amendment on 15.03.2016, 07.06.2017, 06.06.2018, 02.03.2019 and 10.04.2019 issued by ICICI Bank Limited in favor of President of India, acting through Central Government represented by Nominated Authority, and to en-cash an amount of Rs 261,75,94,520/- (Rupees Two Hundred Sixty one Crore Seventy Five Lakh Ninety Four Thousand Five Hundred and Twenty only) which is the entire Guaranteed amount under the said Bank Guarantee and transfer to the account of PAO, Ministry of Coal, bank – Bank of India Branch Name – Connaught Circus, New Delhi, Account No. 0276050414586, IFSC Code – UTBIOCON702, MICR Code – 110027022 on 06.05.2019 for the reason of termination of CMDPA.**


(N K Singh)

Deputy Secretary to the Government of India

नरेन्द्र कुमार सिंह / NARENDER KUMAR SINGH
उप सचिव / Deputy Secretary
कोयला मंत्रालय / Ministry of Coal
भारत सरकार / Govt. of India
शास्त्री भवन / Shastri Bhawan
नई दिल्ली / New Delhi

Copy:-

1. The Chief Secretary, Government of Jharkhand.
2. Coal Controller, Coal Controller Organisation, Kolkata.
3. US (CBA-II)/US (IFD)/US (CLD), Ministry of Coal, Government of India.
4. Pay & Accounts Officer, Pay & Accounts Office, Ministry of Coal for necessary action.
5. The Branch Manager, United Bank of India, Connaught Circus Branch, New Delhi- for necessary action.

