

OFFICE MEMORANDUM

Subject : Minutes of 46th Meeting of the Inter-Ministerial Group (IMG) under the Chairmanship of Additional Secretary (Coal) to review the issue of Bank Guarantee - reg.

The undersigned is directed to refer to the subject mentioned above and to forward herewith minutes of 46th Meeting of the Inter - Ministerial Group to undertake a review on the issue of Bank Guarantees of prior allottees held under the Chairmanship of Additional Secretary (Coal) on 9th December, 2021 at 11:00 A.M. for information and necessary action.

Encl.: As stated above.



(Rishan Rynthathiang)

Under Secretary to the Govt. of India

Tel. No.23073936

e-mail : rishan.r75@nic.in

To

1. Joint Secretary (IE), Department of Economic Affairs, Room No. 67B, North Block, New Delhi.
2. Joint Secretary (Thermal), Ministry of Power, Shram Shakti Bhawan, New Delhi.
3. Joint Secretary, Department for Promotion of Industry and Internal Trade, Udyog Bhawan, New Delhi.
4. Joint Secretary, Ministry of Steel, Udyog Bhawan, New Delhi.
5. Joint Secretary, Department of Legal Affairs, Shastri Bhawan, New Delhi.
6. Joint Secretary (P&S), Ministry of Coal.
7. JS&FA, Ministry of Coal.
8. Advisor (Projects), Ministry of Coal.
9. CMD, CMPDIL, Gondwana Place, Kanke Road, Ranchi.
10. Coal Controller, 1, Council House Street, Kolkata-700001.
11. Deputy Secretary (P&S), Ministry of Coal.

Copy to:

1. PS to Hon'ble Minister for Coal.
2. Advisor to Secretary (Coal).
3. PPS to Additional Secretary (Coal) & Chairman, IMG.
4. STD (NIC) with request to upload on the website of MoC.

MINUTES OF 46th MEETING OF INTER MINISTERIAL GROUP (IMG) UNDER THE CHAIRMANSHIP OF ADDITIONAL SECRETARY (COAL) HELD ON 9th DECEMBER 2021 TO REVIEW THE ISSUE OF BANK GUARANTEES OF PRIOR ALLOTTEES OF COAL BLOCKS AT ROOM NO. 321 MINISTRY OF COAL, CONFERENCE HALL, A-WING, SHASTRI BHAWAN, NEW DELHI-110001

....

List of participants is placed at **Annexure- I**. Representative from State of Odisha joined the meeting through Video Conference mode. All other participants, including representative of the State Government of Jharkhand, attended the meeting physically.

2. Additional Secretary (Coal) & Chairman, IMG welcomed all participants to the meeting. Convenor of IMG briefed the members that in pursuance of the deliberations in 44th Meeting of IMG, out of the 15 coal blocks called for hearing, [whose Bank Guarantee ('BG'), as per their allocation letters, was linked 100% to coal production only] recommendation for release of BG had been made in respect of 8 coal blocks. It was observed that these 8 coal blocks could not commence production for the reasons beyond their control. Hence, by maintaining parity with the recommendations of the 33rd Meeting of IMG, duly accepted by the Government, and in view of comments of the CCO, replies of the prior allottees submitted in writing and in physical hearing and views of the State Government concerned, BG linked to coal production has been recommended to be returned to the prior allottee. The members of IMG were also informed that these recommendations had been duly considered and accepted by the Government and reasoned orders in respect of each of these 8 coal blocks had been issued by the Ministry of Coal ('MoC'). It was further recapitulated that the prior allottees of coal block in respect of the remaining 7 coal blocks (out of 15 blocks) were given another opportunity of being heard by the IMG in its 45th Meeting. Amongst these 7 coal blocks, the prior allottees of 5 coal blocks appeared before 45th Meeting of IMG held on 27th August 2021. The prior allottees of all 5 coal blocks were heard however, considering the lack of supporting documents or proper reply to Show Cause Notice ('SCN') or written submissions, all 5 of them along with 2 coal blocks which did not appear before IMG were provided another (third) opportunity of hearing.

3. Accordingly, as per the agenda of the present meeting, i.e., 46th meeting of IMG, these 7 coal blocks, having BG 100% linked to coal production, along with 2 other blocks (from the remaining 19 blocks) were called for hearing. The prior allottees of all 9 coal blocks, vide letter dated 30th September 2021/email dated 01st October 2021, were requested to provide written submissions with supporting documents for the arguments they were intending to make before IMG, in addition to the replies to SCN (if any) within three weeks of issuance of the letter. In the said letter, dated 30th September 2021, the respective State Government and CMPDIL were also requested to provide comments on the milestones/SCN, which may be relevant to be considered by the members of IMG while making recommendations within four weeks from the date of issuance of the letter. Meeting Notice dated 30th November 2021 was circulated to all members,



prior allottees, respective State Governments, along with the schedule of the meeting, Standard Operating Procedure ('SOP') to be followed by IMG and Agenda of the meeting. The Schedule of hearing of prior allottees of 9 coal blocks for 46th meeting is attached as **Annexure II**.

4. Members of IMG were provided with replies of prior allottees vide email dated 08th December 2021. Copy of all relevant documents including the Allocation Letters of coal blocks, block wise BG calculation details prepared by CCO, SCN dated 28.07.2020, reply to SCN received from the prior allottee, written submission made by the prior allottees, response of the State Government concerned, as and when received, etc. were also provided to the members. The authorisation letter of prior allottees were also verified before hearing. Convenor, IMG briefed each case before calling in the prior allottee for hearing.

5. The written submissions made by prior allottees of coal blocks and other documents received from various stakeholders have been initialled by the Convenor and kept in the custody of P&S-I Section, MoC. Out of 9 coal blocks, the authorised representatives of 4 coal blocks appeared before the present IMG meeting and were heard. Responses of the representatives of the State Governments of Odisha and Jharkhand to the submissions of the prior allottees, as the case may be, in each case were also heard. No one appeared for Brinda, Sesai and Meral, Lalgarh (North) and Dumri coal blocks. List of names of the Authorised Representatives who made their arguments/ submissions in the hearing is attached as **Annexure III**. Deliberations and recommendations of the IMG are given below for each coal block which were called by IMG one by one and were heard.

6. (A) **Chitarpur: -**

Date heard: - 09th December 2021

Called.

Present: -

(i) On behalf of Coal Block Allottee: -

Sh. Iqbal Hussain Ansari, Official Liquidator ('OL')

(ii) On behalf of State Government: - Sh. Bal Kishun Munda

(iii) Members of IMG - as per Annexure-I

(I) Chitarpur coal block was allocated to M/s Corporate Ispat Alloys Limited ('prior allottee') vide allocation letter no. 47011/1(18)/2000-CPAM/CA dated 2nd September 2005. As per terms and conditions at Clause 1 (vi) of the Allocation Letter, BG amounting to Rs.

13.88 crore was required to be deposited by the allocatee. In case of lag in production of coal, a percentage of BG was to be deducted as per Clause 1 (viii) of the terms and conditions of the Allocation Letter. The progress of development of the coal block had been reviewed time and again by the IMG/ MoC before cancellation of its allocation by Hon'ble Supreme Court vide order dated 24th September 2014.

(II) Before cancellation, *inter alia*, the progress of the development of the coal block was reviewed in the 10th Meeting of IMG held on 18th September 2012 vide which BG deduction was recommended for shortfall of production. These recommendations were then duly considered and accepted by the Government and letter dated 05th December 2012 was issued by MoC for deduction of their BG to the tune of Rs. 10.41 crore. This decision of the Ministry was challenged by the prior allottee before Hon'ble High Court of Delhi in WPC no. 7693 of 2012 titled as M/s Corporate Ispat Alloys Limited v. Union of India and Ors. However, subsequent upon the cancellation of allocation of coal block by Hon'ble Supreme Court, the instant Writ Petition was disposed off by Hon'ble High Court of Delhi vide common order dated 30th October 2014 (Shyam Metallics & Energy Limited v. Coal India- WPC No. 4653 of 2014 Limited being the lead case) directing Respondents MoC to decide the issue of invocation of BG on case to case basis.

(III) The progress regarding development of coal block by the prior allottee was again reviewed in the 24th Meeting of IMG held on 7th/ 8th February 2014. The prior allottee filed WP no. 762 of 2014 titled as M/s Corporate Ispat Alloys Limited v. Union of India and Ors before Hon'ble High Court of Jharkhand at Ranchi. Meanwhile, the allocation of coal block got cancelled by Hon'ble Supreme Court and WP no. 762 of 2014 was disposed as withdrawn vide order dated 14th January 2020.

(IV) After cancellation of allocation of the coal block, SCN dated 16th January 2015 was issued to the prior allottee for showing cause as to why the delay in development of coal blocks should not be held as violation of terms and conditions of Allocation Letter indicating in detail the reasons for slippage in respect of each milestone and agency responsible for such delay (as recommended by the 28th Meeting of IMG held on 30th December 2014 and accepted by the Government). However, the SCN dated 16th January 2015 was withdrawn by the Ministry of Coal vide letter dated 04th August 2015 (as recommended by the 31st Meeting of IMG dated 07th July 2015 and accepted by Government).

(V) In pursuance of recommendation of 42nd Meeting of IMG held on 28th May 2020, the block is being reviewed the entire period till the block was held by prior allottees, i.e., 24th September 2014 (date of cancellation of coal block by Hon'ble Supreme Court). From the documents provided by MoC to this IMG, it is gathered that:



- a) No one appeared on behalf of prior allottees before IMG in its 44th Meeting at the scheduled date and time;
- b) In the 45th Meeting of IMG, Sh. Padmakar Murodiya appeared on behalf of the prior allottee on the scheduled date of hearing i.e. 27th August 2021. Sh. Murodiya apprised the members about the liquidation of the company and that he was not prepared with any arguments/documents on that day as the communication regarding the meeting was received a day before. IMG acceded to his request and granted another opportunity of hearing.
- c) Letter dated 30th September 2021 requesting written comments of the prior allottee and Official Liquidator(OL), Kolkata was sent by MoC to the prior allottee to which reply was received by MoC on 08th December 2021 vide email. The prior allottees also sent a copy of the said reply to State government of Jharkhand and O/o CCO. Further, reply was also received from Office of Official Liquidator vide letter dated 25th October 2021.
- d) No reply to SCN dated 28th July 2020 or Written Submission were received by MoC from State of Jharkhand in spite of serving the SCN; letter with request to provide comments dated 30th September 2021; email dated 01st November 2021, and its subsequent reminders emails dated 29th November 2021 and 3rd December 2021; Meeting Notice dated 30th November 2021.
- e) The comments received from prior allottees were shared by MoC with the State Government vide email dated 29th October 2021 and 17th November 2021.
- f) Block wise dossier and BG calculation sheet prepared by O/o CCO has also been placed on record before this IMG.

(VI) The OL appointed by Hon'ble Calcutta High Court appeared before IMG on behalf of the prior allottee. It was informed to the members by the OL that since the company "M/s Corporate Ispat Alloys Limited was wound up by an order of Hon'ble High Court of Calcutta on November 4, 2019, the OL attached with Hon'ble High Court of Calcutta has become liquidator as well as *custodia legis* to obtain assets/ properties of the Company (in liquidation)". Hence, he is representing the company before IMG.

(VII) Further, the members of IMG perused the written submission submitted by the prior allottee on email. The main contentions of Corporate Ispat Alloys Limited were that the terms and conditions of Allocation Letter dated 2nd September 2005 provided that BG can be invoked only in case of lag in production of coal which stage was never reached in view of the cancellation of coal block. Hence, as per the terms and conditions of the Allocation



Letter there should be parity in treatment with the recommendations of 33rd Meeting of IMG wherein it was recommended that in cases where the 100% of BG was linked to production, the amount determined to be deducted was Nil.

(VIII) Following observations were made by IMG with regard to the various milestones in the milestone chart attached to the allocation letter:

- a. Geological Report ('GR') was purchased by the prior allottee,
- b. The BG was submitted although the same was last valid till 22nd August 2014;
- c. Mining Lease ('ML') application and mining plan was submitted within the prescribed time limit;
- d. The Mining plan got approved with a delay of 2 months. It was contended by the prior allottee that the delay was caused on part of Central Government/MoC who took time to process the Mine plan and the revised Mine Plan (as advised by the Standing Committee);
- e. Application for previous approval was made within the actual time limit however, there was slippage for 2 years and 5 months for approval of the same. Prior allottees informed the members of IMG that the State Government took 17 months to process and forward the application to Central Government for its prior approval. The mineral rights at that point in time vested with the Central Coalfields Limited ('CCL'). After receipt of the communication from State Government, MoC directed CCL to transfer the rights immediately to the prior allottees. Still CCL took about five months to transfer the rights. Hence, the prior allottees contended that there was delay on part of Central/ State government;
- f. The application for Forest clearance ('FC') was made in advance by the prior allottee however the Stage-I FC was pending with the State Government. In support of their contentions, the prior allottees submitted that the diversion of forest land was kept pending with the Divisional Forest Officer for almost two years. Thereafter, the Conservator of forest for first time after a delay of 2 years and 20 months forwarded the proposal to Chief Conservator of Forest. Further, the Chief Conservator of Forest took two months and fifteen days in forwarding proposal to Principal Chief Conservator of Forest, Ranchi. With delay, their application for diversion of forest after a delay of almost 4 years was sent to Ministry of Environment and Forest from State. Thereafter, the approval for compensatory afforestation took considerable time and which led to delay on part of Central and State Government agencies and not prior allottee (as contended);
- g. So also, the application for EMP Clearance was made in advance however, the same was granted after the delay of two months.
- h. The Mining Lease ('ML') was not granted and was kept pending till the block was held by the prior allottee;

- i. With regard to the land acquisition, the application was made in advance however the same was kept pending till the block was held by the prior allottee. At the relevant time the mineral rights vested with CCL;
- j. Mine opening permission was kept pending, hence the coal block did not come into production.

(IX) IMG deliberated in detail and without going into merits of all other submissions, be as these may, it considered Clause no. 1 (viii) of Allocation Letter dated 2nd September 2005 which states as under:

“The progress of the mine will be monitored annually with respect to the approved mining plan, which will mention the zero date. In case of lag in the production of coal, a percentage of the bank guarantee amount will be deducted for the year. This percentage will be equal to the percentage of deficit in production for the year with respect to the rated/ peak capacity of the mine eg. if the rated/ peak rated capacity is 100, production as per the approved mining plan for the relevant year is 50 and actual production is 35, then $(50-35)/100 \times 100 = 15\%$ will lead to deduction of the original bank guarantee amount for that year. Upon exhaustion of the Bank Guarantee amount the block shall be liable for de- allocation/ cancellation of mining lease.”

(X) Accordingly, IMG observed that BG is linked to coal production for which zero date is required to be established. The IMG also discussed the zero date for commencement of production of coal as the mining plan for the block had been approved.

(XI) As informed by O/o CCO, zero date was 2nd September 2005 to be effective subsequent to the approval of the mining plan, along with various other requirements, such as grant of ML, acquisition of land, forest and environmental clearances, etc. Mine Opening Permission (MOP), is a mandatory requirement to commence mining operations. Hence, in the absence of MOP, zero date for coal production was inconsequential. IMG also noted that submissions made by prior allottee have been substantiated with supporting documents and delays were not solely attributable to prior allottee.

(XII) IMG deliberated the case in view of submissions made on behalf of allottee including their written submissions and noted that in this case, as per the allocation letter, bank guarantee was linked only to coal production and not with any other milestone. Thus, this case was similar to the 11 cases decided by IMG in its 33rd Meeting dated 03.12.2015 and 8 cases decided in 44th meeting, wherein the 100% BG is linked to coal production only and no deduction from BG was recommended.



(XIII) In view of the recommendations of the 33rd and 44th meetings of IMG, duly accepted by the Government, comments of the CCO, replies of the prior allottee submitted in writing and in physical hearing, the IMG in its present (46th) meeting, after due deliberations and scrutiny of relevant documents, observed that the prior allottee of Chitarpur coal block could not start production for the reasons beyond its control. As 100 % BG in this case was linked to coal production only, the IMG, in the interest of natural justice, fair play and parity in treatment, decided to recommend that the amount of BG deduction is NIL. Hence, the original Bank Guarantee may be returned to prior allottee of Chitarpur coal block.

6. (B) Lalgarh (North): -

Date heard: - 09th December 2021

Called.

Present: -

(i) On behalf of Coal Block Allottee: -

None

(ii) On behalf of State Government: - Sh. Bal Kishun Munda

(iii) Members of IMG - as per Annexure-I

(I) Lalgarh (North) coal block was allocated to M/s Domco Smokeless Fuels ('prior allottee') vide allocation letter no. 47011/1(19)/2000-CPAM/CA dated 8th July 2005. As per terms and conditions at Clause 1 (vi) of the Allocation Letter, BG amounting to Rs. 6.24 crore was required to be deposited by the allocatees. In case of lag in production of coal, a percentage of BG was to be deducted as per Clause 1 (viii) of the terms and conditions of the Allocation Letter. The progress of development of the coal block had been reviewed time and again by the IMG/ MoC before cancellation of its allocation by Hon'ble Supreme Court vide order dated 24th September 2014.

(II) Before cancellation, *inter alia*, the coal block was reviewed in the 6th Meeting of IMG held on 12th September 2012 vide which BG deduction and de-allocation of coal block was recommended. These recommendations were then duly considered and accepted by the Government and letter dated 22nd November 2012 was issued by MoC for deduction of



their BG. This decision of the Ministry was challenged by the prior allottee before Hon'ble High Court of Jharkhand at Ranchi in WPC no. 7744 of 2012 titled as M/s Domco Smokeless Fuels Limited v. Union of India and Ors. The Hon'ble High Court of Jharkhand vide order dated 28th January 2013 directed that no coercive action shall be taken pursuant to letter dated 22nd November 2012. The matter is pending before Hon'ble Court.

(III) After cancellation of allocation of the coal block, SCN dated 16th January 2015 was issued to the prior allottee for showing cause as to why the delay in development of coal blocks should not be held as violation of terms and conditions of Allocation Letter indicating in detail the reasons for slippage in respect of each milestone and agency responsible for such delay (As recommended by the 28th Meeting of IMG held on 30th December 2014 and accepted by the Government). However, the SCN dated 16th January 2015 was withdrawn by the Ministry of Coal vide letter dated 04th August 2015 as recommended by the 31st Meeting of IMG dated 07th July 2015 and accepted by Government.

(V) The instant review of coal block is in pursuance of recommendation of 42nd Meeting of IMG held on 28th May 2020 for reviewing the entire period till the block was held by prior allottees i.e. 24th September 2014 (date of cancellation of coal block by Hon'ble Supreme Court). From the documents provided by MoC to this IMG, it is gathered that:

- a) Reply to SCN dated 28th May 2020 has been received from the prior allottees on 4th September 2020;
- b) No one appeared on behalf of prior allottees before IMG in its 44th Meeting at the Scheduled date and time;
- c) In the 45th Meeting of IMG as well, no one appeared on behalf of prior allottees before IMG. Hence, another opportunity of hearing was given to the prior allottee.
- d) Letter dated 30th September 2021 requesting written submission of the prior allottee was sent by MoC to the prior allottee to which reply was received by MoC on 28th October 2021.
- e) No reply to SCN dated 28th July 2020 or written submission were received by MoC from State of Jharkhand in spite of serving the SCN; letter dated 30th September 2021 with request to provide comments; email dated 01st November 2021, and its subsequent reminders emails dated 29th November 2021 and 3rd December 2021; Meeting Notice dated 30th November 2021.



f) The comments received from prior allottees were shared by MoC with the State Government vide email dated 29th October 2021 and 17th November 2021.

g) Block dossier and BG calculation sheet prepared by O/o CCO has also been placed on record before this IMG.

(VI) Members of IMG perused the written submission and reply submitted by the prior allottee. The main contention of prior allottee was that even though the prior allottee had performed its part and complied with conditions of allocation letter and had submitted a mining plan for approval of zero date but it never came into existence as Mining plan submitted by them never got approved. Resultantly, development of coal block till the production stage could not be achieved. Further, as per the terms and conditions of the Allocation Letter, since BG was linked to coal production only, hence there should be parity in treatment with the recommendations of 33rd Meeting of IMG wherein it was recommended that in cases where the 100% of BG was linked to production, the amount determined to be deducted was Nil.

(VIII) Following observations were made by IMG with regard to the various milestones in the milestone chart attached to the allocation letter:

- a. There was a delay in purchase of GR by the prior allottee. As per the Clause no. 1(v) of the terms and conditions in the allocation letter, the GR was required to be purchased by prior allottee from CMPDIL. The reason attributable to the delay, as contended by prior allottee, was on part of Central Government/ MoC/ CMPDIL belatedly informed the amount to be deposited for purchase of GR;
- b. The BG was submitted before purchase of GR. As per Clause 1(vi) of the terms and conditions in the allocation letter, the BG amount was equal to one year's royalty amount based on mine capacity of 0.5 mtpa assessed by CMPDIL, grades of coal from A to G grades and weighted average royalty @ Rs. 124.87 per tonne) within 3 months from date of the allocation letter. However, prior allottee asserted that in the letter of allocation, the grade of coal was wrongly mentioned and when this fact was pointed out the same was corrected by MoC. (*Para# 15 of the Reply*);
- c. Mining Plan was submitted before MoC on 08th August 2006. On 04th May 2011, Ministry of Coal informed that the Mine plan suffered from gross inadequacies and the company was directed to prepare a fresh Mining Plan together with the Mine closure plan for further on account of change in policy. (*Para# 17 of the Reply*) Letter dated 04th May 2011 attached with Reply was also perused by the members of IMG. In compliance, the company submitted a fresh Mining Plan along with Mine Closure plan on 19th June 2011 [*Para# 1 (x) of the written submissions*]. Letter dated 19th June 2011 attached with Reply was also perused by the members of IMG;
- d. The prior allottees contended that there was a dispute regarding ownership. M/s Electrosteel Casting Limited expressed its intentions to invest in Domco Smokeless Fuels



by subscribing its equity shares in 2004. However, there were certain mismanagements carried by M/s Electrosteel Casting Limited due to which M/s Domco Smokeless Fuels filed a Company petition being CP no. 66 of 2006 before Company Law Board ('CLB'). CLB passed an interim order restraining Electro Steel Castings Limited from proceeding further and getting the coal block allocated to the company cancelled. Prior allottee through the written submissions/ reply has contended that the interim order by CLB in 2006 was in their favour and the same was intimated to the MoC; but even after lapse of about 4 years and 9 months, MoC did not act upon the same resulting in keeping the development in abeyance in absence of approved Mining plan. [Para# 1(vi) (vii) of the Written Submissions]

- e. Remaining milestones were kept pending as the Mining Plan did not get approved. Thus, the Mine Opening Permission was not granted leading to non-production by the instant coal block.

(VII) IMG deliberated in detail and without going into merits of all other submissions, be as these may, it considered Clause no. 1 (viii) of Allocation Letter dated 08th July 2005 which states as under:

"The progress of the mine will be monitored annually with respect to the approved mining plan, which will mention the zero date. In case of lag in the production of coal, a percentage of the bank guarantee amount will be deducted for the year. This percentage will be equal to the percentage of deficit in production for the year with respect to the rated/ peak capacity of the mine eg. if the rated/ peak rated capacity is 100, production as per the approved mining plan for the relevant year is 50 and actual production is 35, then $(50-35)/100 \times 100 = 15\%$ will lead to deduction of the original bank guarantee amount for that year. Upon exhaustion of the Bank Guarantee amount the block shall be liable for de-allocation/ cancellation of mining lease."

(VIII) Accordingly, IMG observed that BG is linked to coal production for which zero date is required to be established. In the present case the mine plan did not get approval.

(IX) As informed by O/o CCO, zero date was 8th July 2005 to be effective subsequent to the approval of the mining plan, along with various other requirements, such as grant of ML, acquisition of land, forest and environmental clearances, etc. Mine Opening Permission (MOP), is a mandatory requirement to commence mining operations. Hence, in the absence of Mining plan and MOP, zero date for coal production was inconsequential. IMG also noted that submissions made by prior allottee have been substantiated with supporting documents and delays were not solely attributable to prior allottee.

(X) IMG deliberated the case in view of submissions made on behalf of allottee including their written submissions and noted that in this case, as per the allocation letter, bank guarantee was linked only to coal production and not with any other milestone. Thus, this



case was similar to the 11 cases decided by IMG in its 33rd Meeting dated 03.12.2015 and 8 cases decided in 44th meeting, wherein the 100% BG is linked to coal production only and no deduction from BG was recommended.

(XI) In view of the recommendations of the 33rd and 44th meetings of IMG, duly accepted by the Government, comments of the CCO, replies of the prior allottee submitted in writing and in physical hearing, the IMG in its present (46th) meeting, after due deliberations and scrutiny of relevant documents, observed that the prior allottee of Lalgarh (North) coal block could not start production for the reasons beyond its control. As 100 % BG in this case was linked to coal production only, the IMG, in the interest of natural justice, fair play and parity in treatment, decided to recommend that the amount of BG deduction is NIL. Hence, the original Bank Guarantee may be returned to prior allottee of Lalgarh (North) coal block.

6. (C) Bijahan Coal Block: -


Date heard: - 09th December 2021
Called.

Present: -

- (i) On behalf of Coal Block Allottee: - Sh. KB Singh
- (ii) On behalf of State Government: - Sh. A.K. Behera
- (iii) Members of IMG - as per Annexure-I

(I) Bijahan coal block was allocated to M/s Bhushan Limited and M/s Shri Mahavir Ferro Alloys Limited under leader associate model vide Allocation Letter no. 13016/33/2005-CA-I, dated 13th January 2006. The Bank Guarantee amounting to Rs. 34 crore was submitted, however, it was revised to Rs. 6.5 crore by order dated 21st August 2015 of Hon'ble High Court of Delhi in WPC 7740 of 2015 titled as Bhushan Power and Steel Limited v. Union of India and ors. In case of lag in production of coal, a percentage of BG was to be deducted as per Clause 1 (xiv) of the terms and conditions of Allocation Letter. The progress of development of the coal block had been reviewed time and again by the IMG/MoC before cancellation of its allocation by Hon'ble Supreme Court vide order dated 24th September 2014.

(II) After allocation of the coal block was cancelled, SCN dated 16th January 2015 was issued to the prior allottee for showing cause as to why the delay in development of coal



blocks should not be held as violation of terms and conditions of Allocation Letter indicating in detail the reasons for slippage in respect of each milestone and agency responsible for such delay (As recommended by the 28th Meeting of IMG held on 30th December 2014 and accepted by the Government).

(III) However, the SCN dated 16th January 2015 was withdrawn by the Ministry of Coal vide letter dated 04th August 2015 as the breach of timelines in respect of the coal block has been evaluated by the Government and accordingly orders regarding the de-allocation/ BG deduction had already been issued and there were no directions by the Hon'ble Delhi Court to review the BG deduction orders in Shyam Metallics & Energy Limited v. Coal India Limited, W.P. 4653 of 2014 (As recommended by the 31st Meeting of IMG dated 07th July 2015 and accepted by Government). Against this withdrawal of SCN vide letter dated 04th August 2015, the prior allottee filed Writ Petition no. 7740 of 2015 titled as Bhushan Power and Steel Limited v. Union of India & Ors. before High Court of Delhi. Hon'ble High Court vide order dated 21st August 2015 directed that no coercive steps are to be taken by MoC. The matter is pending before Hon'ble High Court. Meanwhile, the prior allottee, Bhushan Steel and Power Limited has been declared insolvent and as per approved Resolution plan, JSW has taken over the management.

(IV) As stated, the instant review of coal block is in pursuance of recommendation of 42nd Meeting of IMG held on 28th May 2020 for reviewing the entire period till the block was held by prior allottees. From the documents provided by MoC to this IMG, it is gathered that:

- a. No one appeared on behalf of prior allottees before IMG in its 43rd Meeting at the Scheduled date and time;
- b. Sh. KB Singh and Sh. YK Agarwal appeared before IMG as authorised representative of Bijahan Coal blocks before IMG in its 44th Meeting at the Scheduled date and time; The authorized representatives from M/s Bhushan Power and Steel appeared before the IMG. It was informed by the authorized representatives that their company is undergoing insolvency proceedings and all the communications are received by the monitoring committee. Hence, they did not have any knowledge about the SCN dated 28th July 2020. In view of this, IMG through Ministry of Coal gave the physical copy of the SCN and decided to give time to the prior allottee to present their case. A time of 10 days was sought by the prior allottee and the same was granted by IMG.
- c. In the 45th Meeting of IMG the prior allottee of coal block vide email dated 13th August 2021 informed that since the Writ Petition filed by Bhushan Power and Steel Limited WP (C) 7740 of 2015 was sub-judice before Hon'ble High Court of Delhi, this shall be treated as their presence. In reply, MoC vide email dated 23rd August 2021 informed that "45th Meeting of IMG is neither in violation of any direction of Hon'ble Court of law nor it is a coercive step on part of the Government. It is an attempt to hear the prior allottee with a view to understanding the constraints and the factors that were beyond their



control and arriving at a reasonable settlement of the issue.” However, when the prior allottees were called, no one appeared before the IMG. In view of this, IMG decided to give one more opportunity of being heard to the allottee.

- d. Letter dated 30th September 2021 requesting written comments of the prior allottee was sent by MoC to the prior allottee to which reply was received by MoC on 22nd October 2021.
- e. In reply to SCN dated 28th July 2020 (Reminders dated 14th September 2020, 20th November 2020 and 07th December 2020), Government of Odisha sent a reply dated 24th December 2020. Further, Government of Odisha was requested to provide further Written Submissions for the present (46th) Meeting of IMG vide letter dated 30th September 2021.
- f. The comments received from prior allottees were shared by MoC with the State Government vide email dated 29th October 2021 and vide reminders dated 23rd November 2021, 2nd December 2021 and 3rd December 2021 the State government was requested by MoC.
- g. Block wise dossier and BG calculation sheet prepared by O/o CCO has also been placed on record before this IMG.

(V) Members of IMG perused the written submission submitted by the prior allottee. The main contention of prior allottee was that “during the pendency of the case, a petition under the Section 7 of the Insolvency and Bankruptcy Code, 2016 (‘IBC’) was filed by the Punjab National Bank (CA 254 of 2019 Punjab National Bank v. Bhushan Power and Steel Ltd.) before National Company Law Tribunal, Principal Bench, New Delhi (‘Adjudicating Authority/ NCLT’) for initiating Corporate Insolvency Resolution Process (CIRP) against BPSL”... NCLT vide its order dated 17th February 2020 passed in CA 957 of 2019 (JSW Steel Ltd. v. Mahendra Kumar Khandelwal) upheld the approved Resolution Plan..(Para# 2 of the Written submission) Since JSW has taken over the management of Bhushan Power and Steel Limited, in terms of the Resolution Plan approved by the Ld. NCLT, all inquiries , investigations, claims, liabilities, demand, obligations, penalties, disputes, litigation, arbitration or other judicial , regulatory or administrative proceedings against prior allottee prior to approval of Resolution Plan stands extinguished .”(Para# 4 of the Written submission)

(VI) The authorised representatives of prior allottee Sh. K.B. Singh appeared before the IMG. The authorised representative informed the members of IMG that following this, the prior allottee filed CM Application in WPC 7740 of 2015 praying for setting aside the impugned order dated 04th August 2015 and Show cause notice dated 28th July 2020 in view of the approval of Resolution Plan of JSW Steel Ltd. As also contended in the written submissions, the authorised representatives further contended that since the claim regarding the Bijahan Coal Block finds no place in the resolution plan, and the claim



stands extinguished in view of the findings of the Hon'ble Supreme Court in *Ghanashyam Mishra & Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited* (2021 SCC Online SC 313). MoC placed the legal opinion sought from conducting advocate in the matter before the members of IMG in the instant meeting. On perusal of the legal opinion and further deliberations, IMG was in agreement with the view of the Ld. Counsel that is even after the approval of the Resolution Plan and consequent takeover by the successful Resolution Applicant of the management of the Corporate Debtor, the Bank shall continue to be the surety for the claims. In the present case BG had already been invoked prior to any CIRP process. The ultimate fate however got delayed because of various proceedings filed by the Petitioner which ultimately led to passing of the final order by the Hon'ble High Court. IMG, in pursuance of the SCN dated 28th July 2020, is considering the matter of 34 coal blocks afresh. If IMG reaches the conclusion that the Petitioner was at fault in achieving the milestone, amount would be recovered from the BG which the Bank is obliged to fulfil.

(VII) Vide letter dated 08th December 2021, Government of Odisha communicated that they "have nothing to comment on the reply of M/s Bhushan Power and Steel Ltd. relating to NCLT issues, as it would be adjudicated between Central Government in Ministry of Coal and M/s Bhushan Power and Steel Limited."

(VIII) With regard to the development of coal block, the thrust of the prior allottee's argument was that the BG was linked to production only and requested for return/ release of BG. The prior allottee and State Government also gave their averments regarding achievement of various milestones in the milestone chart attached to the allocation letter. Following observations were made by IMG with regard to amongst the various milestones:

- a. The GR was purchased with a delay for about a year. The prior allottee contended that the reason was attributable to CMPDIL. At the time of allocation of the block to the company the exploration work was carried out by CMPDIL through MECL. The GR has been purchased by prior allottee on 27th April 2007;
- b. BG was submitted in advance;
- c. Thereafter, on 10th August 2007, the prior allottee formally submitted an application for grant of ML with the State Government. Despite repeated requests for grant of ML, in terms of allocation made by the Central Government, the said application was pending with Government of Odisha.
- d. The prior allottee made request to Odisha Industrial and Infrastructure Development Corporation (IDCO) for acquisition of land. As per requirement of the state the appraisal of the land requirement was to be assessed by other agency known as Industrial Promotion and Investment Corporation Limited IPICOL) in January 2008. Government



land was alienated in favour of the prior allottee although for private land, the Gram Sabha which was supposed to be conducted was not held despite notice being served thrice and continuous follow up by the prior allottees with the authorities in the State Government. Hence, there was a delay on part of State Government. (Page # 28- 30 of reply dated 05th February 2012)

- e. The Mining plan got approved on 13th August 2008.
- f. During this Meeting, there were various contentions raised by prior allottees as well as State Government regarding the delay in Land acquisition process and grant of previous approval. The representative from the State Government averred that (Page #22 to 27 of the Reply dated 05th February 2012):
 - i. in view of the pending court case before Hon'ble Supreme Court and investigations of CBI etc., the State Government sought clarifications many times from the Central Government whether the State Government can go ahead with granting the mineral concession. Vide Letter dated 14th January 2014, Joint Secy., MoC gave clarification however, vide letter dated 16th January 2014, another letter from MoC to State Government was sent advising not to act upon para 2 (a) and para 4 of the Ministry's letter. Subsequently, the allocation of coal block got cancelled by order of Hon'ble Supreme Court dated 24th September 2014.
 - ii. There were three Prospecting License ('PL') applications overlapping with the PL application submitted for the instant block. The State Government took time to eliminate other applications inspite of repeated efforts to follow up the development of coal block.
 - iii. The State Government took advice from the Central Government/ MoC on how to proceed/ prior with the overlapping applications, to which MoC replied in 2013 to proceed as per prevailing policy. It was also suggested to out the condition in the mining lease deed, if required.
- g. The Environmental Clearance ('EC') was pending up till the coal block was held by the prior allottee. The reason was attributable to the State Government and Central Government. As per the contentions, Terms of Reference ('TOR') dated 12th June 2006 was issued by Ministry of Environment and Forest ('MoEF'), a study for Environment Impact Assessment ('EIA') was conducted and Environment Management Plan ('EMP') was prepared by Registered Qualified Persons ('RQP') and as required EIA /EMP was submitted to MoEF on 03rd November 2009. The same was also submitted to State Pollution Control Board ('SPCB') on 24th December 2010. The SPCB was requested by the prior allottee to conduct public hearing. However, the request for granting EC couldn't be considered because of the law and order problem prevailing in the area. In this regard, it is also observed that the validity of TOR was for 2 years. The prior allottee requested MoEF to extend the validity of TOR on 19th October 2012. The matter was referred to Expert Appraisal Committee ('EAC') which after detailed deliberations allowed such extension however MoEF rejected the same. On 09th November 2013 SPCB requested District Magistrate and Collector to suggest date and time for public hearing which could not be held. Such delay was not attributable to the prior allottee. (Page# 5 to 13 of the Reply dated 05th February 2012)



- h. Application for FC was submitted on 13th October 2008. The same was not granted and was pending with MoEF. Government of Odisha granted Stage I clearance. (Page#13 to 21 dated 05th February 2012)

(IX) IMG deliberated in detail and without going into merits of all other submissions, be as these may, it considered Clause no. 1 (xiv) of Allocation Letter dated 13th January 2006 which states as under:

“The progress of the mine will be monitored annually with respect to the approved mining plan, which will mention the zero date. In case of lag in the production of coal, a percentage of the bank guarantee amount will be deducted for the year. This percentage will be equal to the percentage of deficit in production for the year with respect to the rated/ peak capacity of the mine eg. if the rated/ peak rated capacity is 100, production as per the approved mining plan for the relevant year is 50 and actual production is 35, then $(50-35)/100 \times 100 = 15\%$ will lead to deduction of the original bank guarantee amount for that year. Upon exhaustion of the Bank Guarantee amount the block shall be liable for de-allocation/ cancellation of mining lease.”

(X) Accordingly, IMG observed that BG is linked to coal production for which zero date is required to be established. The IMG also discussed the zero date for commencement of production of coal as the mining plan for the block had been approved.

(XI) As informed by O/o CCO, zero date was 13th January 2006 to be effective subsequent to the approval of the mining plan, along with various other requirements, such as grant of ML, acquisition of land, forest and environmental clearances, etc. Mine Opening Permission (MOP), is a mandatory requirement to commence mining operations. Hence, in the absence of MOP, zero date for coal production was inconsequential. IMG also noted that submissions made by prior allottee have been substantiated with supporting documents and delays were not solely attributable to prior allottee.

(XII) IMG deliberated the case in view of submissions made on behalf of the prior allottee including their written submissions and noted that in this case, as per the allocation letter, bank guarantee was linked only to coal production and not with any other milestone. Thus, this case was similar to the 11 cases decided by IMG in its 33rd Meeting dated 03.12.2015 and 8 cases decided in 44th meeting, wherein the 100% BG was linked to coal production only and no deduction from BG was recommended.

(XIII) In view of the recommendations of the 33rd and 44th meetings of IMG, duly accepted by the Government, comments of the CCO, replies of the prior allottee submitted in writing and in physical hearing, the IMG in its present (46th) meeting, after due deliberations and scrutiny of relevant documents, observed that the prior allottee of Bijahan



coal block could not start production for the reasons beyond its control. As 100 % BG in this case was linked to coal production only, the IMG, in the interest of natural justice, fair play and parity in treatment, decided to recommend that the amount of BG deduction is NIL. Hence, the original Bank Guarantee may be returned to prior allottee of Bijahan coal block.

6. (D) Dumri coal block: -

Date heard: - 09th December 2021

Called.

Present: -

- (i) On behalf of Coal Block Allottee: - None
- (ii) On behalf of State Government: - Sh. Bal Kishun Munda
- (iii) Members of IMG - as per Annexure-I

(I) Dumri coal block was allocated to M/s Nilanchal Iron and Power Limited ('prior allottee') and Bajrang Ispat (P) Ltd. vide allocation letter no. 13016/31/2005-CA-I dated 13th July 2006. As per terms and conditions at Clause 1 (xiii) of the Allocation Letter, BG amounting to Rs. 6.50 crore was required to be deposited by the allocatees. In case of lag in production of coal, a percentage of BG was to be deducted as per Clause 1 (xv) of the terms and conditions of the Allocation Letter. The progress of development of the coal block has been reviewed time and again by the IMG/ MoC before cancellation of its allocation by Hon'ble Supreme Court vide order dated 24th September 2014.

(II) Before cancellation, *inter alia*, the coal block was reviewed in the 11th Meeting of IMG held on 19th September 2012 vide which proportionate BG deduction was recommended. These recommendations were then duly considered and accepted by the Government and letter dated 23rd November 2012 was issued by MoC for deduction of their BG. This decision of the Ministry was challenged by the prior allottee before Hon'ble High Court of Jharkhand at Ranchi in W.P. (C) No.7054/2012 titled as Nilanchal Iron and Power Limited v Union of India and Ors. *inter alia*, praying for quashing the order dated 23rd November 2012 directing deduction of bank guarantee submitted by the allocatee. The Hon'ble Court vide order dated 05th December 2012 directed that "until further order, no coercive step shall be taken against the petitioner pursuant to impugned order" (i.e. BG deduction order). The matter is pending before Hon'ble Court. The coal block was last reviewed in the 24th Meeting of IMG held on 7th/ 8th February 2014 in which no action was recommended.



(III) After cancellation of allocation of the coal block, SCN dated 16th January 2015 was issued to the prior allottee for showing cause as to why the delay in development of coal blocks should not be held as violation of terms and conditions of Allocation Letter indicating in detail the reasons for slippage in respect of each milestone and agency responsible for such delay (As recommended by the 28th Meeting of IMG held on 30th December 2014 and accepted by the Government).

(IV) However, the SCN dated 16th January 2015 was withdrawn by the Ministry of Coal vide letter dated 04th August 2015 as recommended by the 31st Meeting of IMG dated 07th July 2015 and accepted by Government.

(V) As stated, the instant review of coal block is in pursuance of recommendation of 42nd Meeting of IMG held on 28th May 2020 for reviewing the entire period till the block was held by prior allottees i.e. 24th September 2014 (date of cancellation of coal block by Hon'ble Supreme Court). From the documents provided by MoC to this IMG, it is gathered that:

- a) Reply to SCN dated 28th May 2020 has been received from the prior allottees on 03rd October 2020;
- b) No one appeared on behalf of prior allottees before IMG in its 44th Meeting at the Scheduled date and time;
- c) In the 45th Meeting of IMG the authorized representatives from Nilanchal Iron and Power Limited and Bajrang Ispat Limited, Sh. Ajay Kumar Tantia, Sh. Ashim Kumar Mukherjee and Sh. Amit Gupta appeared and presented their case before the present IMG. The main contention of the authorized representatives was that the delay in achieving the milestone was not due to them but it was on account of time taken by the State and Central Government agencies for grant of various approvals. IMG enquired whether they pursued with the Government authorities persistently and asked for copies of reminders, etc. Prior allottee expressed their inability to instantly show such old papers and requested for some time to search and produce such record. Similarly, the State Government also had no documents to support their statements. IMG directed the authorised representatives of the prior allottees as well as the State Government to submit the relevant documents within 10 days and gave another opportunity of hearing to the prior allottee.
- d) Letter dated 30th September 2021 requesting written submission of the prior allottee was sent by MoC to the prior allottee to which reply was received by MoC on 21st October 2021 from M/s Nilanchal Iron and Power Ltd and on



7th December 2021 from M/s Thakur Prasad Sao ad Sons Pvt. Ltd. (erstwhile Bajrang Ispat Ltd.).

e) No reply to SCN dated 28th July 2020 or written comments were received by MoC from State of Jharkhand in spite of serving the SCN; letter dated 30th September 2021 with request to provide comments; email dated 01st November 2021, and its subsequent reminders emails dated 29th November 2021 and 3rd December 2021; Meeting Notice dated 30th November 2021.

f) The comments received from prior allottees were shared by MoC with the State Government vide email dated 29th October 2021 and 17th November 2021.

g) Block wise dossier and BG calculation sheet prepared by O/o CCO has also been placed on record before this IMG.

(VI) Members of IMG perused the written submission and reply submitted by the prior allottee. The main contention of prior allottee was that as per the terms and conditions of the Allocation Letter, BG was linked to coal production only, hence there should be parity in treatment with the recommendations of 33rd Meeting of IMG wherein it was recommended that in cases where the 100% of BG was linked to production, the amount determined to deducted was Nil.

(VII) Following observations were made by IMG with regard to various milestones in the milestone chart attached to the allocation letter:

- a. There was a delay in purchase of GR by the prior allottee by one year. As per the Clause no. 1(xii) of the terms and conditions in the allocation letter, the GR was required to be purchased by prior allottee from CMPDIL. The GR was provided by CMPDIL to the prior allottee on 02nd May 2006 however on perusal it was observed by the prior allottee that the information required was in fact incomplete. Hence, request was again made to CMPDIL for providing complete GR. The final GR was handed over by CMPDIL on 18th January 2007. (*Page 3 of the Written submissions*). Thus, the delay was on part of CMPDIL. Sufficient documentary evidence / correspondence from prior allottee to CMPDIL have also been attached in Annexure- A of the Written submissions and were perused by the members of this IMG;
- b. The BG was submitted with a delay of one year and six months. As per clause ix of the allocation letter, a tripartite agreement was to be entered between CCL and both the prior allottees before execution of BG. CMD, CCL was requested time and again by the prior allottee for execution of the agreement however to no avail. In absence of the BG, the bank was reluctant to issue the BG. The agreement was finally executed with a delay of twenty one months of the date of submission of BG (*Page 4 of the Written submissions*). Thus , the delay was on part of CCL. Sufficient documentary evidence /

correspondence from prior allottee to CMPDIL have also been attached in Annexure- B of the Written submissions and were perused by the members of this IMG;

- c. Application for ML was submitted with a delay of 1 year and 6 months. As per the Written Submissions, firstly, there was delay in delivery of GR by CMPDIL and secondly, inadequacy of land records. Sufficient documentary evidence / correspondence have also been attached in Annexure- C of the Written submissions and were perused by the members of this IMG;
- d. The Mining Plan was submitted with a delay of 8 months from the scheduled date in the milestone chart appended with allocation letter. This was attributable to delay in receiving GR. Mine plan is solely dependent on GR of mineral deposit. Despite this delay the prior allottee submitted the Mining plan within 6 months from the date of receipt of GR. (*Page # 6 of the Written Submission*) Sufficient documentary evidence / correspondence has also been attached in Annexure- D of the Written submissions and were perused by the members of this IMG;
- e. The Mine plan got approved with a delay of 1 year and 4 months. The reason cited by the prior allottee is that the mine plan submitted in time to MoC, However, MoC asked for an extra copy and then requested to make presentation before the Standing Committee for incorporation of additional information in mining plan. All this took considerable period of time on part of MoC (almost 10 months). (*Page # 7 of the Written Submission*) Sufficient documentary evidence / correspondence has also been attached in Annexure- E of the Written Submissions and were perused by the members of this IMG;
- f. The application for previous approval had 3 years and 10 months delay since, the State Government forwarded the same to Central Government with a delay of 2 years and 10 months. It was also averred that the delay due to obtaining GR along with delay from State Government's end ultimately caused slippage for previous approval, where the prior allottee contends that they have no direct role. Sufficient documentary evidence / correspondence has also been attached in Annexure- F and G of the Written Submissions and were perused by the members of this IMG; (*page#7-8 of the Written Submissions*)
- g. The grant of previous approval took 4 years and 6 months. As per the Written submissions at *page# 8* there was a delay of 2 years and 10 months in forwarding ML application by the State Government. As per the recommendation of Department of Mines and Geology, Government of Jharkhand MoC granted previous approval only for 208.21 hectares out of 383 hectares. This process took 10 months instead of one month as stipulated in the milestone chart. Copy of letter dated 27th June 2011 whereby MoC granted previous approval attached with the Written Submissions as Annexure F was perused by the IMG in support of the contention made by the prior allottee. Relevant communications from prior allottee to MoC is also attached at Annexure G of Written Submissions was also perused by IMG. The prior allottees further requested MoC to also grant the amended previous approval of Dumri coal block since the ML area should be compact and contiguous as per Mines and Mineral (Development and Regulation) Act, 1957 ('MMDR Act'). During the EC of instant coal block, the EAC advised to carve out non coal bearing area from ML and accordingly the area of mining block was revised. Considering this MoC considered issuing amended previous approval but this took



another year. Hence the delay was attributable to MoC. (page# 8- 9 of written submissions) Sufficient documentary evidence / correspondence has also been attached in Annexure- H of the Written Submissions and were perused by the members of this IMG;

- h. The application of FC was submitted belatedly by 1 year and 8 months by prior allottee. The cascading effect of receipt of GR, delay in mining plan were the main reasons. Apart from this, another reason for delay cited by the prior allottee was delay in getting final land schedule (land use map) from District/ Block level, Land Revenue Department, Government of Jharkhand due to inadequacy of records which was one of most vital documents for preparation of FC application. As such the delay cannot be attributable to the prior allottee. Sufficient documentary evidence has also been attached in Annexure- I of the Written Submissions and were perused by the members of this IMG;
- i. Regarding grant of FC, there was confusion regarding Go and No go areas. MoEF had informed the Government of Jharkhand about FC (Stage I) for Dumri coal block. In furtherance of this, DFO Hazaribagh advised the prior allottee for submission of compliance against the condition stated in Stage- I clearance. Correspondence has been attached in Annexure- J of the Written Submissions and were perused by the members of this IMG;
- j. Application for EC was made with a delay of 1 year and 3 months. The delay was caused due to cascading effect caused by obtaining GR and subsequent approval in Mining plan;
- k. The EC was granted after 3 years and 5 months from the scheduled date of completion in the milestone chart. As per the EIA notification prior allottee submitted its proposal for EMP clearance on 24th April 2008 to MoEF. The proposal was heard by EAC. Public hearing took time and the proposal remained under consideration for 2 years 8 months from date of submission instead of stipulated 6 months. The same got approved on 23rd December 2010. Sufficient documentary evidence/ correspondence has also been attached from page were also attached in Annexure- K of the Written Submissions and were perused by the members of this IMG;
- l. Grant of ML remained pending until the blocks was held by prior allottee. As averted, the delay was caused on part of State Government in forwarding the application. There was delay in granting of previous approval and amended previous approval;
- m. There was a delay in providing GR by CMPDIL and delay in getting land schedule from District/ revenue authorities. Thus, application for land acquisition also got delayed by 4 months from the scheduled date stipulated in the milestone chart;
- n. Land acquisition was not complete and was pending until the block was held by prior allottee;
- o. Mine opening Permission could not be obtained as the same could be submitted only after grant of ML;
- p. Hence, in view of the aforesaid from VII (a-o) the production could not be commenced.



(VIII) IMG deliberated in detail and without going into merits of all other submissions, be as these may, it considered Clause no. 1 (xv) of Allocation Letter dated 13th January 2006 which states as under:

“The progress of the mine will be monitored annually with respect to the approved mining plan, which will mention the zero date. In case of lag in the production of coal, a percentage of the bank guarantee amount will be deducted for the year. This percentage will be equal to the percentage of deficit in production for the year with respect to the rated/ peak capacity of the mine eg. if the rated/ peak rated capacity is 100, production as per the approved mining plan for the relevant year is 50 and actual production is 35, then $(50-35)/100*100=15\%$ will lead to deduction of the original bank guarantee amount for that year. Upon exhaustion of the Bank Guarantee amount the block shall be liable for de- allocation/ cancellation of mining lease.”

(VIII) Accordingly, IMG observed that BG is linked to coal production for which zero date is required to be established. The IMG also discussed the zero date for commencement of production of coal as the mining plan for the block had been approved.

(IX) As informed by O/o CCO, zero date was 13th July 2006 to be effective subsequent to the approval of the mining plan, along with various other requirements, such as grant of ML, acquisition of land, forest and environmental clearances, etc. Mine Opening Permission (MOP), is a mandatory requirement to commence mining operations. Hence, in the absence of MOP, zero date for coal production was inconsequential. IMG also noted that submissions made by prior allottee have been substantiated with supporting documents and delays were not solely attributable to prior allottee.

(X) IMG deliberated the case in view of submissions made on behalf of the prior allottee including their written submissions and noted that in this case, as per the allocation letter, bank guarantee was linked only to coal production and not with any other milestone. Thus, this case was similar to the 11 cases decided by IMG in its 33rd Meeting dated 03.12.2015 and 8 cases decided in 44th meeting, wherein the 100% BG was linked to coal production only and no deduction from BG was recommended.

(XI) In view of the recommendations of the 33rd and 44th meetings of IMG, duly accepted by the Government, comments of the CCO, replies of the prior allottee submitted in writing and in physical hearing, the IMG in its present (46th) meeting, after due deliberations and scrutiny of relevant documents, observed that the prior allottee of Dumri coal block could not start production for the reasons beyond its control. As 100 % BG in this case was linked to coal production only, the IMG, in the interest of natural justice, fair play and parity in treatment, decided to recommend that the amount of BG deduction is



NIL. Hence, the original Bank Guarantee may be returned to prior allottee of Dumri coal block.

6. (E-G) Brinda, Sesai and Meral coal block

Date heard: - 09th December 2021

Called.

Present: -

(i) On behalf of Coal Block Allottee: - None

(ii) On behalf of State Government: - Sh. Bal Kishun Munda

(iii) Members of IMG - as per Annexure-I

(I) Brinda, Sesai and Meral coal blocks were allocated to M/s Abhijeet Infrastructure Limited ('prior allottee') vide allocation letter no. 47011/1 (20)/2000- CPAM/CA/ CA-I dated 26th May 2005. As per terms and conditions at Clause 1 (vi) of the Allocation Letter, BG amounting to Rs. 15.24 crore (for Brinda Rs. 5.31 crore, for Sesai and 2.45 crore and Meral 7.48 crore) was required to be deposited by the allocatees. In case of lag in production of coal, a percentage of BG was to be deducted as per Clause 1 (viii) of the terms and conditions of the Allocation Letter. The progress of development of the coal block has been reviewed time and again by the IMG/ MoC before cancellation of its allocation by Hon'ble Supreme Court vide order dated 24th September 2014.

(II) Before cancellation, *inter alia*, the coal block was reviewed in the 23rd Meeting of IMG held on 23rd/ 24th October 2014 vide which proportionate BG deduction was recommended as per terms and conditions of allocation letter. On 7th and 8th February, 2014 in the 24th meeting of the IMG the allocatees of 61 coal blocks allocated to private companies were asked to furnish documentary proof of statutory clearance vide Ministry's letter dated 15th January 2014. Also, the nodal/administrative Ministries/Departments and the Chief Secretaries of coal bearing States were asked to furnish comments. Considering the facts and progress in development of the coal block, the IMG recommended no further action. These recommendations were then duly considered and accepted by the Government and letter dated 07th March 2014 was issued by MoC for deduction of their BG. This decision of the Ministry was challenged by the prior allottee before Hon'ble High Court of Jharkhand at Ranchi in W.P. (C) No.1473 of 2014 titled as Abhijeet Infrastructure Limited v. Union of India and Ors. *inter alia*, praying for quashing the order dated 07th March 2014 directing deduction of bank guarantee submitted by the allocatee. The Hon'ble Court vide order dated 12th March 2014 directed that "until further order, no coercive step shall be taken against the petitioner pursuant to impugned order" (i.e. BG



deduction order). Meanwhile the allocation of coal block was cancelled by Hon'ble Supreme Court. The matter has been disposed off being infructuous on 21st January 2020.

(III) After cancellation of allocation of the coal block, SCN dated 16th January 2015 was issued to the prior allottee for showing cause as to why the delay in development of coal blocks should not be held as violation of terms and conditions of Allocation Letter indicating in detail the reasons for slippage in respect of each milestone and agency responsible for such delay (As recommended by the 28th Meeting of IMG held on 30th December 2014 and accepted by the Government).

(IV) However, the SCN dated 16th January 2015 was withdrawn by the Ministry of Coal vide letter dated 04th August 2015 as recommended by the 31st Meeting of IMG dated 07th July 2015 and accepted by Government.

(V) As stated, the instant review of coal block is in pursuance of recommendation of 42nd Meeting of IMG held on 28th May 2020 for reviewing the entire period till the block was held by prior allottees. From the documents provided by MoC to this IMG, it is gathered that:

- a) No one appeared on behalf of prior allottees before IMG in its 44th Meeting at the Scheduled date and time;
- b) In the 45th Meeting of IMG Sh. Padmakar Murodiya, appeared on behalf of these 3 blocks and apprised the members that he was not prepared with any arguments/ documents on that day as the communication regarding the Meeting was received a day before. Accordingly, IMG granted another opportunity of hearing.
- c) Letter dated 30th September 2021 requesting Written Submissions of the prior allottee was sent by MoC to the prior allottee to which reply was received by MoC on 16th November 2021 from prior allottee of the three blocks.
- d) No reply to SCN dated 28th July 2020 or written comments were received by MoC from State of Jharkhand in spite of serving the SCN; letter dated 30th September 2021 with request to provide comments; email dated 01st November 2021, and its subsequent reminders emails dated 29th November 2021 and 3rd December 2021; Meeting Notice dated 30th November 2021.
- e) The comments received from prior allottees were shared by MoC with the State Government vide email dated 29th October 2021 and 17th November 2021.



f) Block wise dossier and BG calculation sheet prepared by O/o CCO has also been placed on record before this IMG.

(VI) Members of IMG perused the written submission submitted by the prior allottee. The main contention of prior allottee was that as per the terms and conditions of the Allocation Letter, BG was linked to coal production only, hence there should be parity in treatment with the recommendations of 33rd Meeting of IMG wherein it was recommended that in cases where the 100% of BG was linked to production, the amount determined to be deducted was Nil.

(VII) Following observations were made to the effect that amongst the various milestones in the milestone chart attached to the allocation letter:

- a. On 23rd February 2005 the Company approached the competent authority for procurement of GR of the said coal block and purchased the same. The Exploration Cost incurred for preparation of GR was paid upon the receipt of the cost of exploration from CCL, for Brinda-Sisai block on 20th September 2006 & for Meral Coal Block on 08th January 2007 and the procurement of the GR was confirmed by CMPDIL. In terms of the allocation, the company was to furnish a bank guarantee of amount as provided by the letter of allocation, the company furnished a bank guarantee of Rs. 7.76 Crores & Rs. 7.48 Crores for Brinda Sesai & Meral coal blocks respectively.
- b. The letter of allocation required submission of mining plan for approval by the competent authority. The Company accordingly submitted the draft Mining plan to MOC on 26th November 2005 for Brinda-Sesai. Similarly, on 28th December 2005 the company submitted the draft of Mining plan for Meral coal block.
- c. MoC granted approval to the mining plan of the company on 28th September 2006 & 10th January 2008 for Brinda-Sesai & Meral coal blocks respectively.
- d. Consent from the Jharkhand Pollution Control Board was received on 05th October 2006 & 09th November 2009 in relation to the Brinda-Sesai & Meral coal blocks respectively.
- e. The mining lease application was required to be submitted along with Village Map, Land Schedule and other details as per the prescribed format. The Company accordingly submitted the mining lease application in the prescribed format in January-2006 itself, for the Brinda-Sesai & Meral coal blocks to respective DMO. Despite the fact that the company had submitted the application for mining lease application for Brinda-Sesai & Meral coal block on 10th January 2006 to DMO, it took 2 years & 7 months to forward the same to the State Government.
- f. The State Government further kept it pending for more than 2 years & finally forwarded the proposal to the MOC on 27th July 2010 for obtaining previous approval.
- g. For conveying previous approval to State of Jharkhand, 1 year and 7 months was taken by MoC, before finally granting it on 15th February 2012. Further the previous approval conveyed by the Ministry was not in conformity with the provisions of MMDR Act, and



therefore even after approaching the ministry several times, no progress for rectification took place. In respect to the Meral coal block, the proposal got delayed at the office of the DMO itself by 3 years, due to non-availability of proper land records in the district. After thorough examination, the Dy. Commissioner, Palamu, forwarded the proposal to the Jharkhand Government on 09th August 2010, after lapse of more than 4 and half years from the date of submission.

- h. The Jharkhand Government took 16 months in processing the proposal and forwarded it on 09th January 2012 to MoC for its previous approval. Several reminders and personal meetings were arranged by the Company for the proposal.
- i. The application for obtaining forest clearance in respect of the Brinda-Sesai coal blocks was submitted to District Forest Officer (DFO), Hazaribagh on 10th April 2006. However, as the process of bifurcation of the Hazaribagh forest division was underway the application could not be processed in the DFO office. After the division of Hazaribagh forest zone, a fresh application had to be resubmitted by the Company to DFO on 07th June 2008, DFO Chatra.
- j. The state government took more than 4 years for processing the application and finally forwarded the proposal on 11th August 2010 to the MoEF for grant of Stage-I Forest Clearance. MoEF took further 6 months in completing all procedural formalities and finally conveyed Stage-I Forest Clearance on 11th February 2011.
- k. Company had already procured 132.69 ac. Of Compensatory Afforestation Land against diverted forest land of Rs. 121.25 ac. Registration and mutation of 114.69ac of Compensatory Afforestation Land had not been completed even after repeated follow up with the concerned DFO (Chatra North).
- l. On 03rd February 2010 the Company submitted the mine closure plans for Meral Coal block & further on 17th February 2010 for Brinda-Sesai & Meral coal blocks to the MoC.
- m. On 19th May 2011, the Mine Closure plan had been approved by MoC for Brinda- Sesai block via its letter dated 19th May 2011. MOC took 15 months to approve the Mine Closure plan for Brinda-Sesai block and the approval for mine closure plan for the Meral block is still awaited from MoC.

(VIII) IMG deliberated in detail and without going into merits of all other submissions, be as these may, it considered Clause no. 1 (viii) of Allocation Letter dated 26th May 2005 which states as under:

“The progress of the mine will be monitored annually with respect to the approved mining plan, which will mention the zero date. In case of lag in the production of coal, a percentage of the bank guarantee amount will be deducted for the year. This percentage will be equal to the percentage of deficit in production for the year with respect to the rated/ peak capacity of the mine eg. if the rated/ peak rated capacity is 100, production as per the approved mining plan for the relevant year is 50 and actual production is



35, then $(50-35)/100 \times 100 = 15\%$ will lead to deduction of the original bank guarantee amount for that year. Upon exhaustion of the Bank Guarantee amount the block shall be liable for de- allocation/ cancellation of mining lease.”

(VIII) Accordingly, IMG observed that BG is linked to coal production for which zero date is required to be established. The IMG also discussed the zero date for commencement of production of coal as the mining plan for the block had been approved.

(IX) As informed by O/o CCO, zero date was 26th May 2005 to be effective subsequent to the approval of the mining plan, along with various other requirements, such as grant of ML, acquisition of land, forest and environmental clearances, etc. Mine Opening Permission (MOP), is a mandatory requirement to commence mining operations. Hence, in the absence of MOP, zero date for coal production was inconsequential. IMG also noted that submissions made by prior allottee have been substantiated with supporting documents and delays were not solely attributable to prior allottee.

(X) IMG deliberated the case in view of submissions made on behalf of prior allottee including their written submissions and noted that in this case, as per the allocation letter, bank guarantee was linked only to coal production and not with any other milestone. Thus, this case was similar to the 11 cases decided by IMG in its 33rd meeting dated 03.12.2015 and 8 cases decided in 44th meeting, wherein the 100% BG was linked to coal production only and no deduction from BG was recommended.

(XI) In view of the recommendations of the 33rd and 44th meetings of IMG, duly accepted by the Government, comments of the CCO, replies of the prior allottee submitted in writing and in physical hearing, the IMG in its present (46th) meeting, after due deliberations and scrutiny of relevant documents, observed that the prior allottee of Brinda, Sesai and Meral coal blocks could not start production for the reasons beyond their control. As 100 % BG in these cases was linked to coal production only, the IMG, in the interest of natural justice, fair play and parity in treatment, decided to recommend that the amount of BG deduction is NIL. Hence, the original Bank Guarantee may be returned to prior allottee of Brinda Sesai and Meral coal block.

6. (H) Patratu Coal block: -

Present: -

(i) On behalf of Coal Block Allottee: -

Sh. Uttam Kumar Biswas

(ii) On behalf of State Government: - Sh. Bal Kishun Munda



(iii) Members of IMG - as per Annexure-I

The authorized representative from Jharkhand State Mineral Development Corporation ('JSMDC'), Sh. Uttam Kumar Biswas appeared and presented the case before the present IMG. The main contention of the authorized representatives was that the delay in achieving the milestone was not due to them but it was on account of time taken by the State and Central Government agencies for grant of various approvals. IMG enquired whether they pursued with the Government authorities persistently and asked for copies of reminders, etc. Prior allottee expressed their inability to instantly show such records supporting their contention and requested for some time to search and produce such record. Similarly, the State Government also had no documents to support their statements. The authorised representatives of the prior allottees as well as the State Government requested to submit the relevant documents within 45 days. Accordingly, IMG gave another opportunity of hearing to the prior allottee on receipt of relevant documents from them.

6. (I) Rabodih OCP Coal block: -

Present: -

(i) On behalf of Coal Block Allottee: -

Sh. Uttam Kumar Biswas

(ii) On behalf of State Government: - Sh. Bal Kishun Munda

(iii) Members of IMG - as per Annexure-I

The authorized representative from JSMDC, Sh. Uttam Kumar Biswas appeared and presented the case before the present IMG. The main contention of the authorized representatives was that the delay in achieving the milestone was not due to them but it was on account of time taken by the State and Central Government agencies for grant of various approvals. IMG enquired whether they pursued with the Government authorities persistently and asked for copies of reminders, etc. Prior allottee expressed their inability to instantly show such records supporting their contention and requested for some time to search and produce such record. Similarly, the State Government also had no documents to support their statements. The authorised representatives of the prior allottees as well as the State Government requested to submit the relevant documents within 45 days and gave another opportunity of hearing to the prior allottee on receipt of relevant documents from them.



7. With this, physical hearing in the 46th Meeting of IMG ended. Thus, opportunity of being heard has been afforded to all prior allottees who had been invited.

8. Gist of recommendations for each coal block is given below:

(i) **Chitarpur:** The amount of BG deduction is NIL. Hence, the original Bank Guarantee may be returned to prior allottee.

(ii) **Lalgarh (North):** The amount of BG deduction is NIL. Hence, the original Bank Guarantee may be returned to prior allottee.

(iii) **Bijahan:** The amount of BG deduction is NIL. Hence, the original Bank Guarantee may be returned to prior allottee.

(iv) **Dumri:** The amount of BG deduction is NIL. Hence, the original Bank Guarantee may be returned to prior allottee.

(v- vii) **Brinda Sesai and Meral:** The amount of BG deduction is NIL. Hence, the original Bank Guarantee may be returned to prior allottee.

(viii) **Patratu:** - Another chance of hearing is given to the prior allottees of the coal block.

(ix) **Rabodih:** - Another chance of hearing is given to the prior allottees of the coal block

9. The 46th Meeting of IMG ended with a vote of thanks to and from chair.



ANNEXURE I

LIST OF MEMBERS OF IMG FOR HEARING ON 09TH DECEMBER 2021

S. NO.	NAME	DESIGNATION	MINISTRY/ DEPARTMENT/ ORGANISATION
1.	Sh.Vinod Kumar Tiwari	Additional Secretary (Coal)/ Chairman of IMG	Ministry of Coal
2.	Sh. B. P. Pati	Joint Secretary	Ministry of Coal
3.	Ms. Santosh	Coal Controller	Ministry of Coal
4.	Ms. Nirupama Kotru	JS&FA	Ministry of Coal
5.	Sh. R.S. Shrinet	Dy. Legal Advisor	Department of Legal Affairs, Ministry of Law and Justice
6.	Sh. Rajeev Kumar	Director	Ministry of Power
7.	Ms. Archana Mayaram	Director	Department of Economic Affairs, Ministry of Finance
8.	Sh. G. Gopalkrishnan	Deputy Secretary	Ministry of Steel
9.	Sh.Darshan Kumar Solanki	Deputy Secretary/ Convenor	Ministry of Coal
10.	Sh. S.K. Gomasta	Director (Technical)	CMPDIL
11.	Sh. Pravin Kumar Sharan	Chief Manager (Geology)/ TS to Director (Tech/ CRD)	CMPDIL
12.	Sh. Arun Kumar	Under Secretary	Department for Promotion of Industry and Internal Trade

Officers of MoC in Attendance

13.	Sh. Rishan Ryntathiang	Under Secretary	Ministry of Coal
14.	Ms. Ankita Mathur	Assistant Manager (Legal)	Ministry of Coal
15.	Ms. Priyanka Parida	Legal Consultant	Ministry of Coal

Annexure II

SCHEDULE OF HEARING OF PRIOR ALLOTTEES ON 09TH DECEMBER 2021

SL. NO.	TIME	NAME OF COAL BLOCK	STATE	NAME OF ALLOTTEE COMPANY
1.	11:00 am – 11:20 am	Chitarpur	Jharkhand	Corporate Ispat Limited
2.	11:20 am – 11:40 am	Lalgarh (North)	Jharkhand	Domco Pvt. Limited
3.	11:40 am- 12 Noon	Bijahan	Odisha	Bhushan Power and Steel Limited
4.	12 Noon- 12:20 pm	Dumri	Jharkhand	Nilanchal Iron & power Limited
5- 7	12:20 pm- 12:40 pm	Brinda Sesal and Meral	Jharkhand	Abhijeet Infrastructure Limited
8	12:40 pm- 1:00 pm	Patratu	Jharkhand	Jharkhand Mineral State Development Corporation
9	12:40 pm- 1:00 pm	Rabodih	Jharkhand	Jharkhand Mineral State Development Corporation

Annexure III

**LIST OF NAMES OF THE AUTHORISED REPRESENTATIVES FOR HEARING
DATED 09th MARCH 2021**

SL. NO.	NAME OF AUTHORISED REPRESENTATIVE, DESIGNATION	NAME OF COAL BLOCK	NAME OF ALLOTTEE COMPANY	STATE
1	Sh. AK Behera, Additional Secretary	--		Government of Odisha
2.	Sh. Bal Kishun Munda, Additional Secretary	---		Government of Jharkhand
3.	Sh. Iqbal Hussain Ansari, Official Liquidator	Chitarpur	Corporate Ispat Alloys Limited	Jharkhand
4	Sh. KB Singh, Administrator	Bijahan	Bhushan Power and Steel Limited	Odisha
8	Uttam Kumar Biswas	Patratu	Jharkhand Mineral State Development Corporation	Jharkhand
9.	Uttam Kumar Biswas	Rabodih	Jharkhand Mineral State Development Corporation	Jharkhand