

MOST IMMEDIATE
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F.No.13016/17/2014-CA-I
Government of India
Ministry of Coal

Shastri Bhawan, New Delhi,
Dated : the 1st January, 2015

OFFICE MEMORANDUM

Subject : Minutes of the 28th meeting of the Inter-Ministerial Group (IMG) under the Chairmanship of Additional Secretary (Coal) to undertake review on the issue of Bank Guarantee of the coal blocks.

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The undersigned is directed to refer to the 28th meeting of Inter-Ministerial Group (IMG) held on 30.12.2014 under the Chairmanship of Additional Secretary (Coal) on the above subject and to circulate herewith a copy of the minutes of said meeting for information and necessary action.



[A. SANJAY SAHAY]

Under Secretary to the Government of India
Tel : 23073936

To,

1. Ms. Sharmila Chavly, Joint Secretary, Deptt. of Economic Affairs, North Block, New Delhi.
2. Shri A.K. Singh, Joint Secretary (Thermal), Ministry of Power, Shram Shakti Bhawan, New Delhi
3. Shri Shailendra Singh, Joint Secretary, Dept. of Industrial Policy & Promotion, Udyog Bhawan, New Delhi
4. Shri Syedain Abbasi, Joint Secretary, Ministry of Steel, Udyog Bhawan, New Delhi.
5. Shri S.K. Mohapatra, Joint Secretary, Deptt. of Legal Affairs, Shastri Bhawan, New Delhi.
6. Ms. Sujata Prasad, JS&FA, Ministry of Coal
7. Shri A.K. Bhalla, Joint Secretary (AKB), Ministry of Coal
8. Shri Vivek Bhardawaj, Joint Secretary (VB), Ministry of Coal
9. Shri D.N. Prasad, Advisor (Projects), Ministry of Coal
10. Shri Amrit Acharya, Coal Controller, 1, Council House Street, Kolkata-700001.
11. Shri A.K. Debnath, CMD, CMPDIL, Gondwana Place, Kanke Road, Ranchi.
12. Director (CA-III), MoC
13. Director (CA-I) & Member-Convener, MoC

Copy to :

1. PS to Minister of State (I/C) for Coal, Power & New & Renewable Energy
2. Sr. PPS to Secretary (Coal)
3. PPS to AS (Coal)
4. Legal Cell, Ministry of Coal
- ✓ 5. Technical Director, NIC Cell, Ministry of Coal to upload the minutes of 28th IMG on the Website of Ministry.



[A. SANJAY SAHAY]

Under Secretary to the Government of India

Tel : 23073936

MINUTES OF THE 28TH MEETING OF THE INTER-MINISTERIAL GROUP (IMG) UNDER THE CHAIRMANSHIP OF ADDITIONAL SECRETARY (COAL) TO UNDERTAKE REVIEW ON THE ISSUE OF BANK GUARANTEE OF THE COAL BLOCKS.

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A list of participants is enclosed at Annexure.

2. Welcoming the participants, Additional Secretary (Coal) informed that this meeting had been convened to undertake review on the issue of Bank Guarantees submitted by prior allottees of coal blocks, 204 of which stand cancelled out of total 218 coal blocks.

3. IMG was informed that a number of coal block allocatees approached the Hon'ble Delhi High Court praying for quashing de-allocation of their respective coal blocks as well as for relief from the order for invocation of Bank Guarantees (BG) submitted to the Government. The common order dated 30.10.2014 of Hon'ble Delhi High Court in this regard in respect of about 57 cases was recapitulated, as reproduced below :-

"The aforesaid petitions have been filed inter alia praying for the cancellation of the de-allocation of the coal blocks which were allocated to the petitioners. In view of the decision of the Supreme Court in Manohar Lal Sharma v. The Principle Secretary and Ors.: W.P. (Crl.) No.120/2012, decided on 24.09.2014, no relief for cancelling the de-allocation of the coal blocks can be granted.

The only issue that remains is with regard to invocation of bank guarantees which were furnished by the petitioners for allocation of the coal blocks.

The petitioners contend that the delay in achieving the specified milestones in development of coal blocks were for reasons beyond their control and mostly on account of delays on the part of respondents and/or their agencies. In these circumstances, the petitioners pray that the bank guarantees furnished by them ought to be released. It is further submitted that the guarantees were in the nature of

performance guarantees and in view of the de-allocation of coal blocks the invocation of those guarantees would not be justified and the petitioners would be entitled for their release.

The learned counsel for the respondents states that the issue of invocation of bank guarantees furnished by the petitioners (prior allottees) is currently under consideration of the Ministry of Coal, Govt. of India.

In this view, I deem it appropriate that the present petitions be disposed of with the following directions:

- 1. That the petitioners would keep alive all bank guarantees that are currently alive in favour of the respondents, for a further period of three months.*
- 2. That the respondents shall take a decision in respect of each individual case whether the bank guarantees ought to be invoked or released within a period of eight weeks from today.*
- 3. The said decision of the respondents would be communicated to the petitioners within a period of one week, thereafter.*
- 4. In the event the respondents decides to invoke the bank guarantee or pursue its encashment, the respondents shall not do so for a further period of two weeks after communicating their decision to the petitioners, to enable the petitioners to take appropriate action in accordance with law."*

4. IMG observed that the matter was examined in MoC in consultation with Department of Legal Affairs (DLA), Ministry of Law & Justice. DLA opined as under :-

"It is stated in the referring note that Hon'ble Delhi High Court has directed the Department iinter alia to take a decision in respect of each

individual case, whether the bank guarantee ought to be invoked or released, within a period of eight weeks. The order may be complied with within the stipulated period specified therein.

2. *In this regard, it is pertinent to state that the terms of allocation letter including bank guarantee terms agreed to by the parties is a contract providing for mutual obligations. Performance of the respective obligations on the part of the parties is essential. Deduction/forfeiture of bank guarantee is dependent upon the conditions of contract agreed between the parties.*

3. *The question whether there has been a delay and lapses attributable to the allottee in achieving the set milestones is purely a question of fact. Needless to say that the delay attributable on the part of the Government itself, if any, must also be taken into consideration. It is for the administrative department to evaluate the nature and extent of breach, if any. While implementing the High Court order each individual case is required to be considered as per the agreed terms in the light of the factual matrix involved therein."*

5. The IMG deliberated upon the order of Hon'ble Delhi High Court as well as the opinion of DLA. Questions were raised as to whether it would be appropriate to invoke BG submitted by the allocatees of cancelled coal blocks for not developing the coal blocks as per the milestones laid down in the allocation letter, keeping in view the fact that the allocation of coal block itself had been declared as arbitrary and illegal by Hon'ble Supreme Court. IMG observed that subsequent annulment of coal blocks cannot exempt the allocatees of cancelled coal blocks from invocation/deduction of BG because even if subsequently de-allocated, it was a fact that coal blocks were allocated to them. Subsequent development or consequence cannot override the condition precedent or bounden stipulations of allocation of coal blocks. As per the conditions of allocation letter, allocatees were bound to develop the coal blocks within the time period stipulated in the allocation letter and for default, if any, allocatees were liable to paying consequences including damages. The order of Hon'ble Delhi High Court also makes it

unambiguously clear that the issue of BG remains alive. DLA has also opined to evaluate the extent of breach and invocation/deduction of BG on a case to case basis, taking into consideration the delay and lapses attributable on the part of the allocatees as well as the Government, if any.

6. The Group felt that it was a fact that apart from delays and lapses on the part of the prior allottees, the same might have also been caused due to delay both on the part of agencies of Central Government as well as of the State Governments. For example, mining leases were not executed by various State Governments in spite of all the statutory clearances obtained by the prior allottees.

7. After due deliberations, IMG recommended to issue show cause notices (SCN) afresh to all such coal block allocatees as to why the BG should not be deducted for delay in development of coal block until it were held by the allocatees and for not adhering to the milestones chart prescribed for block development. The reply to show cause notice should indicate in detail the reasons for slippage in respect of each milestone and agency responsible for such delay. Further, while considering the reply to show cause notice, allocatees may be given opportunity to present their case before the IMG, if they so desire. The IMG for considering the reply to SCN may co-opt representative from the State Government concerned as well as MoEF so that a considered view would be taken whether delay could be on account of the Government agencies. Further, based on the replies to SCNs, Coal Controller Organisation would prepare a chart indicating slippage with reference to each milestone and reasons indicated by the prior allottee for presentation before the IMG. IMG also observed that since the time granted by Hon'ble Delhi High Court was very short to follow the above course of action, MoC may take appropriate action to seek extension of time from the Hon'ble High Court.

8. The meeting ended with a vote of thanks to the Chair.

LIST OF PARTICIPANTS

28TH MEETING OF THE INTER-MINISTERIAL GROUP (IMG) UNDER THE CHAIRMANSHIP OF ADDITIONAL SECRETARY (COAL) TO UNDERTAKE REVIEW ON THE ISSUE OF BANK GUARANTEE OF THE COAL BLOCKS.

S. NO.	NAME AND DESIGNATION [S/SHRI]	MINISTRY / DEPARTMENT / ORGANISATION
1.	Addl. Secretary (Coal)	In the Chair
2.	A.K. Bhalla, JS	MoC
3.	D.N. Prasad, Adviser (P)	MoC
4.	S.K. Shahi, Director (CA-III)	MoC
5.	A. Acharya, Coal Controller	CCO [MoC]
6.	Shekhar Saran, DT (CRD)	CMPDI, Ranchi [MoC]
7.	Harpreet Singh Pruthi, Director	Ministry of Power
8.	Nand Lal, Sr. Dev. Officer	DIPP, M/o. Commerce & Industry

Officers of MoC in Attendance

1.	A. Sanjay Sahay, Under Secretary
2.	Manish Uniyal, Section Officer
3.	Sambhav Jain, DM (Legal)
4.	Hrishikesh K.S., AM (Legal)