

BY SPEED POST

F.No.CA-13016/13/2016-CA1
Government of India
Ministry of Coal

Shastri Bhawan, New Delhi,
Dated :

01.09.2016

OFFICE MEMORANDUM

Subject : 35th Meeting of the Inter-Ministerial Group (IMG) under the Chairmanship of Special Secretary (Coal) to review the issue of Bank Guarantees of prior allottees / allottees of coal blocks – reg.

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I am directed to refer to this Ministry's OM No.13016/13/2016-CA-I dated 05.08.2016 on the subject mentioned above and to forward herewith the minutes of 35th meeting of IMG held on 16.08.2016 at 11.00 AM under the Chairmanship of Special Secretary, Ministry of Coal for your information and necessary action.

[RISHAN RYNTATHIANG]

Under Secretary to the Government of India

Tel : 23073936

To,

1. Shri Aniruddha Kumar, Joint Secretary, Ministry of Power, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. Shri Syedain Abbasi, Joint Secretary, Ministry of Steel, Udyog Bhawan, New Delhi.
3. Ms. Sharmila Chavly, Joint Secretary (IE), Department of Economic Affairs, Room No.67B, North Block, New Delhi.
4. Shri Shailendra Singh, Joint Secretary, Department of Industrial Policy & Promotion, Udyog Bhawan, New Delhi.
5. Shri G.S. Yadav, Joint Secretary, Department of Legal Affairs, Ministry of Law & Justice, Shastri Bhawan, Rafi Marg, New Delhi.
6. Shri R.P. Gupta, Joint Secretary, Ministry of Coal, Shastri Bhawan, New Delhi.
7. Shri Vivek Bharadwaj, Joint Secretary, Ministry of Coal, Shastri Bhawan, New Delhi.
8. Shrimati T.C.A Kalyani, JS&FA, Ministry of Coal, Shastri Bhawan, New Delhi.
9. Shri D.N. Prasad, Advisor (P), Ministry of Coal, Shastri Bhawan, New Delhi.
10. Shri Shekhar Saran, CMD, CMPDIL, Gondwana Place, Kanke Road, Ranchi.
11. Shri Anjani Kumar, Coal Controller, 1, Council House Street, Kolkata.

Copy for information to:-

OSD to Hon'ble MoS (I/c) for Coal/ PSO to Secretary (Coal)/PPS to Special Secretary (Coal)

✓ Technical Director (NIC) with the request to upload this OM on the website of MoC.

35th MEETING OF THE INTER-MINISTERIAL GROUP (IMG) UNDER THE CHAIRMANSHIP OF SPECIAL SECRETARY (COAL) TO REVIEW THE ISSUE OF BANK GUARANTEES SUBMITTED BY ALLOTTEE(S)/ PRIOR ALLOTTEE(S) OF COAL BLOCKS ON 16.08.2016 AT 11.00 AM IN CONFERENCE ROOM OF MINISTRY OF COAL, A-WING, 3RD FLOOR, SHASTRI BHAWAN, NEW DELHI.

A list of participants is enclosed at Annexure-I.

2. Welcoming the participants, Special Secretary (Coal) & Chairman, IMG informed the members that the present IMG meeting had been convened to deliberate upon the issues circulated as per the Agenda. The IMG decided to deliberate upon and make recommendations on issues mentioned in the Agenda one by one.

I. Issue of deduction/release of BG submitted by M/s. Reliance Power Ltd. (RPL) in respect of Kerandari B&C coal block (Tilaiya UMPP) and transfer of Kerandari B&C coal block in favour of Jharkhand Infrapower Ltd.

(a) The IMG was informed that vide allocation letter dated 20.07.2007 of Ministry of Coal, Power Finance Corporation (PFC) was conveyed 'in principle' approval of the Central Government to the working of Kerandari B&C coal block by M/s. Jharkhand Integrated Power Ltd. (JIPL) which was a wholly owned subsidiary of PFC. M/s. Reliance Power Ltd. (RPL) acquired JIPL from PFC on 07.08.2009 after emerging as the lowest bidder in the international competitive bidding process for Tilaiya UMPP conducted by Ministry of Power/PFC. Thereafter, development of Kerandari B&C coal block was reviewed from time to time by the Ministry of Coal.

(b) Vide letter dated 01.05.2015, RPL communicated that it had terminated the PPA dated 10.09.2008 for the reason that Procurers had failed to fulfill principal development period obligations under conditions of PPA even after lapse of 5 ½ years of handing over of JIPL (SPV created by PFC for development of Tilaiya UMPP) to RPL. Hence, RPL requested MoC to release its BG amounting to Rs.208.16 crores submitted for Kerandari B&C coal block.

(c) Ministry of Power was requested to furnish clarification in the matter. Ministry of Power had *inter alia* replied that the procurers on the basis of majority had decided to accept the option of 'Agree for Termination' and the entire ownership of JIPL would go to procurers pursuant to Article 3.3.3A of the PPA. In respect of BG submitted by RPL, Ministry of Power had replied that the BG submitted by RPL with MoC was related to development activities of coal blocks and release of BG may be decided by MoC. Ministry of Power has also requested MoC to take necessary action for transfer/re-allocation of Kerandari B&C coal blocks to Jharkhand Intrapower Ltd. (JIL) as per revised SBDs. Accordingly, it was decided in the Ministry of Coal to place the matter before IMG for making recommendation.

(d) RPL/JIPL was given show cause notice (SCN) dated 21.06.2016 to intimate the delay caused for non-achievement of milestones stipulated for Kerandari B&C coal block and RPL has replied to the above-mentioned SCN vide its letter dated 12.07.2016.

(e) Further, to take a decision in the matter of deduction/ release of BG submitted by RPL/JIPL for Kerandari B&C coal block, Ministry of Power, PFC Consulting Ltd. (PFCCCL) and Jharkhand Urja Vikas Nigam Ltd. (JUVNL) were requested to furnish further clarification.

(f) RPL/JIPL was requested to present its case before the IMG. Representatives of RPL/JIPL came and gave presentation before the IMG. They *inter alia* stated that as per the PPA signed between RPL/JIPL and the Procurers, JIPL had performed its obligations, which were independent of Procurers fulfilling their conditions subsequent, well in time during the development period. However, Procurers condition subsequent remained unfulfilled even after 5½ years from the transfer of JIPL to RPL including the availability of land. Hence, delay in project development/ implementation was not attributable to JIPL/RPL. Representative of JIPL/RPL stated that notice for termination of PPA under Article 3.3.3A could be issued only when Procurers had failed to perform Conditions Subsequent obligations under 3.1.2A. They argued that the acceptance of the notice for termination of PPA by the Procurers and their decision to acquire JIPL as a consequence of the same, clearly established that the delay in execution of the project (including end-use power plant and Kerandari B&C coal block) was not attributable to RPL or JIPL. The IMG

informed the representatives of JIPL/RPL that notice for termination issued by them was accepted by the Procurers but that would not imply that the grounds of termination had been accepted by the Procurers. Nor would it imply that it were due to their default only; there could be other commercial/ technical considerations which could not be presumed merely by the service of the notice. Hence, the contention of JIPL/RPL that acceptance of the notice for termination issued by them under Section 3.3.3A of the PPA by the Procurers implied that delay in execution of the project was not attributable to RPL/JIPL was not tenable. The IMG also enquired from the representative of JIPL/RPL as to what date they considered as 'zero date' from which the development of power plant was to be synchronized with development of coal block. Representatives of JIPL/RPL informed that they considered the taking over of JIPL i.e. 07.08.2009 as zero date. IMG felt that this contention too was not beyond debate.

(g) The IMG noted that Ministry of Power, vide OM dated 11.08.2016, had informed that the matter was under process and the comments would be provided after due deliberations with the concerned stakeholders and requested MoC to keep the matter pending for a while. Vide letter dated 10.08.2016, PFC Consulting Ltd. also furnished its comments in the matter. However, Jharkhand Urja Vikas Nigam Ltd. (JUVNL), the lead Procurer, has not furnished its comments/clarification in the matter.

(h) In view of the above, the IMG observed that comments/clarification of JUVNL was very important to take a decision and recommended that as requested by Ministry of Power, the matter may be kept pending for a while. IMG also directed CCO to prepare the BG deduction calculation by taking into consideration the delay attributable solely on part of JIPL/RPL in development of Kerandari B&C coal block.

(i) The IMG also observed that JIPL has filed W.P. (C) No.4580/2015 (*JIPL & Ors. Vs. UOI*) before the Hon'ble Delhi High Court wherein the Hon'ble High Court vide order dated 07.05.2015 had *inter alia* directed UOI to give at least 3 weeks' prior written notice if it were to take a decision to invoke and/or encash the BG in issue. JIPL has also been directed to keep the BG alive till a decision was taken qua the aforementioned BG and if, the decision for any reason, was adverse to the

interest of JIPL, it would be kept alive for a period of six weeks beyond the date of decision.

II. To consider the representation of West Bengal Power Development Corporation Ltd. (WBPDCIL) for deduction/release of BG submitted in respect of Pachwara North coal block as per directions of Hon'ble Kolkata High Court in AST No.217 of 2016.

(a) Pachwara (North) coal block in the State of Jharkhand was allocated to WBPDCIL vide allocation letter dated 26.04.2005 subject to certain conditions. As per condition No.(iv) of the allocation letter, WBPDCIL was to submit a bank guarantee (BG) equal to one year's royalty/cess amount based on mine capacity and grade of coal assessed by CMPDIL. Accordingly, BG amounting to Rs.152.07 crores was submitted by WBPDCIL through Indian Bank, Kolkata. Subsequently, Hon'ble Supreme Court vide its judgement/order passed in W.P. (Crl.) No.120/2012 cancelled 204 coal blocks including Pachwara (North).

(b) After cancellation of 204 coal blocks including Pachwara (North) by Hon'ble Supreme Court, it was decided in the Ministry to review the issue of deduction/release of BG submitted by prior allottees of the said blocks until the same were held by them for non-development until cancellation. Show Cause Notice (SCN) dated 16.01.2015 was sent to WBPDCIL for clarifying the delay in non-achievement of milestones for development of Pachwara (North) coal block. The IMG in its 34th meeting held on 08.01.2016 reviewed Pachwara (North) coal block and observed that in case of Pachwara (North) coal block, 100% BG was linked to production and hence, BG amount must be deducted for any lag in production. The principle adopted for determination of BG amount to be deducted for any lag in production was that the financial year in which mine opening permission was granted by CCO, would be considered as the first year and targeted production for that year should be calculated on pro-rata basis of production schedule mentioned in the approved mining plan. The BG determined to be deducted for lag in production in subsequent year could be calculated as per schedule of production given in mining plan for each year of production vis-à-vis actual coal production. Accordingly, BG deduction calculations were made by CCO and the same were accepted by the IMG as per which an amount of Rs.19.799514 crores from the BG submitted by WBPDCIL for Pachwara (North) coal block was recommended by the

IMG for deduction. The same was accepted by the Government and, accordingly, vide OM dated 03.05.2016, CCO was directed to encash the BG amount.

(c) CCO wrote several letters to Indian Bank, Kolkata requesting to deduct Rs.19.799514 crores from the BG submitted by WBPDCCL for Pachwara (North) coal block and transfer the said amount on encashment or otherwise to CCO's Account with United Bank of India, Kolkata. However, Indian Bank did not deposit the BG deduction amount in the Government Account which amounts to dishonouring Government of India's direction.

(d) In the meantime, WBPDCCL filed AST No.217 of 2016 before High Court of Calcutta against Union of India challenging MoC's BG deduction order dated 03.05.2016. Vide order dated 01.07.2016, Hon'ble Calcutta High Court *inter alia* set aside the MoC's BG invocation order dated 03.05.2016 and directed MoC to consider WBPDCCL's supplementary reply alongwith its reply dated 10.02.2015 and pass a reasoned order within a period of 10 weeks from the date of submission of reply and communicate the same to WBPDCCL within a week thereafter. The Court also directed WBPDCCL to validate the BG till December 2016.

(e) Vide letter dated 14.07.2016, WBPDCCL submitted its supplementary reply which was placed before the IMG for its consideration. The IMG also granted an opportunity to WBPDCCL to make presentation before the IMG. Representatives of WBPDCCL appeared and made oral presentation before the IMG. They contended that although the block was allocated in favour of WBPDCCL, subsequently vide MoC's Notification dated 23.06.2005, the Central Government specified as an end use, the supply of coal from Pachwara (North) coal block by the Bengal Emta Coal Mines Ltd. (BECML) on an exclusive basis to the power plants of the WBPDCCL for generation of thermal power subject to the condition that the West Bengal Government, through its undertakings, namely, WBPDCCL and Durgapur Projects Ltd., held at least 26% of voting equity share capital of BECML at all times. Subsequent to issuance of the said Notification, mining lease of Pachwara (North) coal block was executed in favour of BECML and it was BECML which was extracting coal from the said block and supplying to power plants of WBPDCCL for generation of thermal power. Also, as per Section 3(1)(n) of the Coal Mines (Special Provisions) Act, 2015, BECML is the prior allocatee for Pachwara (North) coal block as mining lease of Pachwara North coal block had been executed in its name.

Hence, the WBPDCCL representatives argued, the JV company i.e. BECML was the allocatee of Pachwara (North) coal block and not WBPDCCL.

(f) The IMG enquired from the representative of WBPDCCL whether any shareholding agreement was entered into between the JV partners of BECML and what was the condition of submission of BG to MoC in respect of Pachwara (North) coal block in that agreement. Representatives of WBPDCCL were unable to answer the query raised by IMG; he only stated that BG had been submitted by WBPDCCL for the said block. Hence, the IMG requested the representative of WBPDCCL to verify the records and submit the shareholding agreement, if any, to MoC for examination.

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

(h) Further, the representatives of WBPDCCL contended that on 28.03.2013 permission to open the coal mine was given by the Coal Controller. This was expressly made subject to obtaining required clearance from the competent authorities under the relevant rules, regulations etc. They further contended that immediately after getting this opening permission, the prior allottee i.e. BECML (as per their interpretation), made an application on 09.05.2013 to the Jharkhand State Pollution Control Board (JSPCB) for consent to operate. This consent to operate was issued on 28.12.2013. Only thereafter, the mine could be operated. Thus, the first financial year of operation was the year 2013-14. For the period

post 28.12.2013 and upto 30.03.2014, there was only approximately 3 months' time, during which period the prior allottee produced 0.098 MT of coal. Thereafter, for the full financial year, 2014-15, the prior allottee produced 3.9498 MT coal as against the target of 2 MT for the first year specified in the approved mining plan. Thus, there was no shortfall in production.

(i) The IMG took note of the above contention of WBPDC's representatives and recommended that CCO would verify from its records as to how the mine opening permission (MOP) was granted prior to consent of JSPCB to operate and also as to whether MOP was mandatory for getting the consent to operate or vice-versa.

Accordingly, the IMG recommended that if the MOP was inadvertently granted before prior allottee having obtained the consent to operate, then CCO should revisit the BG deduction calculation as per the guidelines formulated by the IMG in its 34th meeting.

III. Confirmation of the original signed BG deduction calculation submitted by CCO which was considered and approved by the IMG in its 31st meeting.

IMG was informed that 31st meeting of the IMG to review the issue of deduction / release of BG submitted by prior allottees of cancelled coal blocks was held on 07.07.2015 wherein the IMG reviewed the cases of 49 coal blocks. Out of the said 49 coal blocks, in cases of 34 coal blocks, IMG observed that court cases had been filed by prior allottees against MoC's orders for de-allocation / BG deduction or both. Hence, IMG recommended that the earlier order passed by MoC regarding BG deduction would stand since the same was taken after due consideration at that time. In respect of the remaining 15 coal blocks, IMG recommended release of BG in case of 11 blocks and deduction of BG in case of 4 blocks [viz. Rajgamar Dispside (South of Phulakdih Nala), Fatehpur, Rohne and Thesgora-B/ Rudrapuri]. However, the BG deduction amount in case of the said 4 blocks was not mentioned in the approved minutes of 31st IMG meeting. Therefore, it was decided that original signed copy of BG deduction calculations placed before 31st IMG be called from CCO and the same be confirmed by IMG in this meeting. Accordingly, CCO submitted the original signed BG deduction calculations to MoC which were placed for consideration and making recommendations by the IMG in its 31st meeting. IMG decided to confirm the said original signed BG deduction

calculation submitted by CCO as per which the BG deduction amount recommended by the IMG in its 31st meeting in respect of the above-mentioned 4 coal blocks is as under :-

S. No.	Name of Coal Block	Name of Prior allottee (M/s.)	Amount of BG to be deducted (Rs. in crore)
1.	Rajgamar Dispside (South of Phulakdih Nala)	Monet Ispat and Energy Ltd.	0.14837
2.	Fatehpur	SKS Ispat and Power Ltd and Prakash Industries Ltd.	0.3834
3.	Rohne	JSW Steel Ltd., Bhushan Power & Steel Ltd. and Jai Balaji Industries Ltd.	0.52081928
4.	Thesgora-B/ Rudrapuri	Kamal Sponge Steel & Power Limited and Revati Cement P. Ltd.	0.17476

In respect of the above-mentioned 4 coal blocks, the IMG observed that in respect of Rajgamar Dispside (South of Phulakdih Nala), BG amount had already been deducted and deposited in Government account. However, remaining BG were not returned by CCO due to non-issuance of BG release order by MoC. Hence, IMG recommended that the remaining BG in case of the above-mentioned block be returned. Further, the IMG observed that in case of Fatehpur and Rohne coal blocks, CCO was unable to encash BG since prior allottees had filed WP (C) No.8144/2015 and WP (C) No.11551/2015 respectively before the Delhi High Court which were hence sub-judice. In case of Thesgora-B/ Rudrapuri, BG was not renewed by prior allottees and, hence, BG amount not deposited into Government Account. The IMG noted that claim has been submitted to Nominated Authority for adjustment of Rs.0.17476 crores from the compensation to be paid for mine infrastructure to prior allottees of Thesgora-B/Rudrapuri. However, if the same could not be adjusted from the compensation to be paid to prior allottees, appropriate legal proceedings may be initiated for recovery of Rs.0.17476 crores from the prior allottees of Thesgora-B/Rudrapuri coal block.

IV. Release of BG submitted by NTPC for Chatti Bariatu (South) coal block.

Chatti Bariatu (South) coal block was allocated to NTPC-vide allocation letter dated 25.07.2007. This block was earlier de-allocated on 14.06.2011 based on the recommendations of Review Committee. On the requests of Ministry of Power and NTPC, this block was re-allocated to NTPC on 23.01.2013. Subsequently, this block was cancelled by Hon'ble Supreme Court alongwith other 203 coal blocks. After cancellation by Supreme Court, this block was not reviewed for deduction/release of BG since this coal block was dipside of Chatti Bariatu coal block and mine development/production was to commence after end of mining in Chatti Bariatu coal block i.e. in 2039 onwards. CCO informed that although NTPC Ltd. had not validated the BG, it was requesting for release of its original BG. IMG also noted that this block had again been allocated to NTPC Ltd. as per the provisions of the Coal Mines (Special Provisions) Act, 2015 and NTPC Ltd. had already submitted a consolidated BG for Chatti Bariatu and Chatti Bariatu (South) coal blocks with the Nominated Authority.

In view of the above, the IMG recommended releasing the original BG submitted by NTPC Ltd. with CCO in respect of Chatti Bariatu (South) coal block before its cancellation by the Hon'ble Supreme Court.

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

ANNEXURE-I

35th MEETING OF THE INTER-MINISTERIAL GROUP (IMG) UNDER THE CHAIRMANSHIP OF SPECIAL SECRETARY (COAL) TO REVIEW THE ISSUE OF BANK GUARANTEES SUBMITTED BY ALLOTTEE(S)/ PRIOR ALLOTTEE(S) OF COAL BLOCKS ON 16.08.2016 AT 11.00 AM IN CONFERENCE ROOM OF MINISTRY OF COAL, A-WING, 3RD FLOOR, SHASTRI BHAWAN, NEW DELHI.

LIST OF PARTICIPANTS

S. No.	Name & Designation	Ministry / Department / Organization/Company
1.	Dr. A.K. Dubey, Special Secretary (Coal)	In the Chair
2.	Shri R.P. Gupta, Joint Secretary	Ministry of Coal
3.	Shri Vivek Bharadwaj, Joint Secretary	Ministry of Coal
4.	Shri D.N. Prasad, Advisor (P)	Ministry of Coal
5.	Shrimati T.C.A Kalyani, JS&FA	Ministry of Coal
6.	Shri Anjani Kumar, Coal Controller	Coal Controller
7.	Shri Aniruddha Kumar, Joint Secretary	Ministry of Power
8.	Shri Manvendra Goyal, Director	Ministry of Steel
9.	Dr. R.S. Shrinet, Assistant Legal Adviser	Ministry of Law & Justice, Department of Legal Affairs
10.	Shri Nand Lal, Consultant	Department of Industrial Policy & Promotion
11.	Shri A.N. Sethuraman, Group President	M/s. Reliance Power Ltd.
12.	Shri N. Venugopal Rao,	M/s. Reliance Power Ltd.
13.	Shri N.K. Deo, Senior Vice President	M/s. Reliance Power Ltd.
14.	Shri Jagat Paikara, Vice President	M/s. Reliance Power Ltd.
15.	Shri Shrikant Kulkarni, President-Business & Strategy	M/s. Reliance Power Ltd.
16.	Shri Sushanta Kr. Sarkar, General Manager	M/s. West Bengal Power Development Corporation Limited (WBPDCCL)
17.	Shri V.R. Chilumuri	M/s. WBPDCCL
18.	Shri Reetobroto Mitra	M/s. WBPDCCL
